

Farmers' Guide to the 2021 Paycheck Protection Program (PPP)

March 31, 2021

Farmer Legal Assistance Hotline
877-860-4349



Farmers' Legal Action Group

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Written by Stephen Carpenter and Lindsay Kuehn
Copyedited by Wendy Reid

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Farmer Legal Assistance Hotline
877-860-4349

Farmers' Legal Action Group
6 West Fifth Street, Suite 650
St. Paul, Minnesota 55102
(651) 223-5400
lawyers@flaginc.org
www.flaginc.org



Scott W. Carlson
Executive Director | Attorney

Lindsay R. Kuehn
Staff Attorney

Stephen Carpenter
Deputy Director | Senior Staff Attorney

Wendy Reid
Office & Grants Administrator

Lynn A. Hayes
Program Director | Senior Staff Attorney

Dave Glenn
Financial Manager | Accountant

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Chapter One: Introduction and Overview of the Paycheck Protection Program

In 2020, the CARES Act created a new Small Business Administration (SBA) program called the Paycheck Protection Program (PPP).¹ Under this program, banks and other lenders, including the Farm Credit System, make loans guaranteed by the federal government to small businesses.² The loans are designed to be forgiven, so long as the business continues to employ workers and uses the funds on allowable expenses. On December 27, 2020, the Economic Aid Act changed some of the rules for PPP loans and extended the application deadline until March 31, 2021.³ The deadline was extended again with the passing of the PPP Extension Act.⁴ The current PPP deadline is May 31, 2021.

I. Current as of March 30, 2021

This Guide to the 2021 Paycheck Protection Program is current as of March 30, 2021.

FLAG previously published three editions of the Farmers' Guide to COVID-19 Relief. Each included a section on the Paycheck Protection Program.⁵ Recent changes to PPP warrant the creation of a stand-alone Guide to PPP.

II. Funding, Availability, and Deadlines for PPP

The funding, availability, and potential loan forgiveness of PPP has been confusing and has changed several times.

As of February 7, 2021, over six million loans have been made for about 623 billion dollars.⁶

A. CARES Act and Additional Funding for PPP

The CARES Act originally gave 349 billion dollars in funding for the PPP.⁷ According to SBA, that money ran out by April 16, 2020.⁸ On April 24, 2020, the Paycheck Protection

¹ Coronavirus Aid, Relief, and Economic Security Act (CARES Act) § 1102(a), 116 Public Law 136, 134 Stat. 281 (March 27, 2020). As a bill, it was known as H.R. 748 (March 27, 2020).

² Lenders can be existing SBA lenders, federally insured depository institutions, federally insured credit unions, and the Farm Credit System. CARES Act § 1102(a) (March 27, 2020).

³ Consolidated Appropriations Act, 2021, 116 Pub. Law 260, Division N, Title III, Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) § 323(a) (December 27, 2020). As a bill it was known as H.R. 133.

⁴ PPP Extension Act of 2021 (PPP Extension Act) § 2, 117 Public Law 6 (March 30, 2021). As a bill, it was known as H.R. 1799 (March 30, 2021); SBA, Paycheck Protection Program (March 30, 2021), at: <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program>.

⁵ They can be found on FLAG's website, at: <http://www.flaginc.org/covid-19-guide/>.

⁶ SBA, Paycheck Protection Program, PPP Data (February 10, 2021), at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-data>.

⁷ CARES Act § 1102(b) (March 27, 2020).

⁸ The exhaustion of PPP money was announced in an SBA statement that does not now appear on the SBA list of Press Releases and Media Advisories. For reporting on the exhaustion of PPP money, see Emily Flitter, Loan Money Runs Out While Small-Business Owners Wait in Line, New York Times (April 16, 2020), at: <https://www.nytimes.com/2020/04/16/business/coronavirus-sba-loans-out-of-money.html>; see also Mark Niquette and Jennifer Jacobs, Small Business Relief Funds Drained Fast With Many Shut Out, Bloomberg (April 16, 2020), at:

Program and Health Care Enhancement Act (Enhancement Act) became law.⁹ It gave an additional 310 billion dollars in funding for the PPP.¹⁰ Then, on December 27, 2020, the Economic Aid Act became law.¹¹ It provided billions of dollars more in PPP funding.

B. PPP Program Extended Until May 31, 2021

Following the passing of the PPP Extension Act, the new deadline to apply for PPP loans is May 31, 2021.¹² Lenders will then have thirty days to process the applications.

PPP funds are available on a first come first serve basis.¹³ This has been an important detail, especially considering the history of funding and enrollment for the program. Under the original terms of the CARES Act, the deadline to apply for a PPP loan was June 30, 2020.¹⁴ When the first round of funding ran out, SBA temporarily stopped accepting applications.¹⁵ The Enhancement Act then provided additional money for the PPP, and SBA began accepting PPP applications again on April 27, 2020.¹⁶ Then, on July 4, 2020—after the original June 30, 2020, deadline had passed—an extension of PPP became law.¹⁷ SBA started accepting PPP applications again on July 6, 2020, and accepted them through August 8, 2020.¹⁸ With the passing of the Economic Aid Act on December 27, 2020, more money was allocated for PPP loans, and the deadline was extended through March 31,

<https://www.bloomberg.com/news/articles/2020-04-16/virus-rescue-program-for-small-business-runs-out-of-money>.

⁹ Paycheck Protection Program and Health Care Enhancement Act (Enhancement Act), 116 Pub Law 139, Division A—Small Business Programs § 101(a)(1) (April 24, 2020).

¹⁰ An official statement announced the resumption of PPP. See Joint Statement by SBA Administrator Jovita and Treasury Secretary Steven T. Mnuchin on the Resumption of the Payback Protection Program (April 24, 2020), at <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/joint-statement-sba-administrator-jovita-carranza-and-treasury-secretary-steven-t-mnuchin-resumption>.

¹¹ Economic Aid Act § 323(d) (December 27, 2020).

¹² PPP Extension Act § 2 (March 30, 2021); SBA, Paycheck Protection Program (March 30, 2021).

¹³ Self-Employed PPP Interim Final Rule, 85 Fed. Reg. 21,747, 21,752 (April 20, 2020); First Official PPP Interim Final Rule, 85 Fed. Reg. 20,811, 20,813 (April 15, 2020); Initial PPP Interim Final Rule, at 13 (April 2, 2020).

¹⁴ CARES Act § 1102(a)(2) (March 27, 2020).

¹⁵ SBA published the first application form for PPP on April 3, 2020. Small businesses and sole proprietorships could apply for the PPP beginning April 3, 2020. Independent contractors and self-employed individuals could apply starting April 10, 2020. However, because the program ran out of money, SBA temporarily stopped accepting PPP applications. For the first application form SBA released, see SBA, Payback Protection Program Borrower Application Form (April 3, 2020), <https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form>. A PDF of the original application can be found at: <https://www.sba.gov/sites/default/files/2020-04/PPP-Borrower-Application-Form-Fillable.pdf>.

¹⁶ Enhancement Act § 101 (April 24, 2020); Small Business Association (SBA), Press Release No 30-34, Joint Statement by SBA Administrator Jovita Carranza and Treasury Secretary Steven T. Mnuchin on the Resumption of the Paycheck Protection Program, at: <https://www.sba.gov/article/2020/apr/24/joint-statement-sba-administrator-jovita-carranza-treasury-secretary-steven-t-mnuchin-resumption>.

¹⁷ Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116-142, 134 Stat. 641 (June 5, 2020).

¹⁸ See SBA, Payback Protection Program, Notice: Paycheck Protection Program Has Reopened (July 24, 2020), at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

2021.¹⁹ The most recent legislation, under the PPP Extension Act, extended the PPP deadline to May 31, 2021.²⁰

C. Key Changes Made to PPP by the December 27, 2020, Economic Aid Act

Following the enactment of the Economic Aid Act, there are now two types of PPP loans that a borrower may apply for. One type is called “first draw PPP loans.” The other is called “second draw PPP loans.”²¹ First draw PPP loans, as the name suggests, are for those borrowers who have not previously received a PPP loan. A second draw PPP loan is for any borrower who has already received a PPP loan.

Under these new rules, no eligible borrower may receive more than one first draw PPP loan. A borrower also may not receive more than one second draw PPP loan.²² Any borrower who received a PPP loan in 2020 is considered to have received a first draw loan and may therefore only be eligible now for a second draw loan.

III. Rules and Regulations for PPP

The rules for PPP during 2020 were released in an ongoing and confusing way. In addition, with the December 27, 2020, passing of the Economic Aid Act—technically known as the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act—a number of PPP rules have changed. It can therefore be difficult to understand exactly how SBA is administering the program.

At present, there are several notable sources of the rules for PPP.²³

A. Acts of Congress

The following Acts of Congress govern PPP.

1. PPP Extension Act of 2021 (March 30, 2021)

The most recent legislation affecting PPP, the PPP Extension Act of 2021, was signed into law on March 30, 2021.²⁴ This Act extends the PPP application deadline from March 31, 2021, to May 31, 2021.

¹⁹ Economic Aid Act § 323(d) (December 27, 2020).

²⁰ PPP Extension Act § 2 (March 30, 2021); SBA, Payroll Protection Program (March 30, 2021).

²¹ See generally Economic Aid Act, Title III (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692 (January 14, 2021).

²² First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); First Official PPP Interim Final Rule, 85 Fed. Reg. 20,811, 20,813 (April 15, 2020); Initial PPP Interim Final Rule, at 12 (April 2, 2020). The CARES Act does not include this requirement.

²³ Not discussed here are Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans, 85 Fed. Reg. 23,212 (April 27, 2020), at <https://www.govinfo.gov/content/pkg/FR-2020-04-27/pdf/2020-08920.pdf>, and Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans, 85 Fed. Reg. 20,387 (April 13, 2020) (to be codified at 12 C.F.R. pts. 3, 217, 324 (interim final rule)), at: <https://www.govinfo.gov/content/pkg/FR-2020-04-13/pdf/2020-07712.pdf>.

²⁴ PPP Extension Act of 2021 (PPP Extension Act) § 2, 117 Public Law 6 (March 30, 2021). As a bill, it was known as H.R. 1799 (March 30, 2021). A copy can be found here: <https://www.congress.gov/117/bills/hr1799/BILLS-117hr1799enr.pdf>. For an official announcement, see White House, Press Release: Bill Signing: H.R. 1799 (March 30, 2021), at: <https://www.whitehouse.gov/briefing-room/legislation/2021/03/30/press-release-bill-signing-h-r->

This Guide refers to this as the “PPP Extension Act.”

2. American Rescue Plan Act of 2021 (March 11, 2021)

On March 11, 2021, the American Rescue Plan Act of 2021 was signed into law.²⁵ This act changed some of the PPP rules, primarily with respect to the eligibility of some nonprofit organizations and entities with certain NAICS codes.²⁶ These codes group businesses by industry.

This Guide refers to this as the “Rescue Plan PPP Rule.”

3. Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (December 27, 2020)

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act was signed into law on December 27, 2020.²⁷ This Act was part of the larger Consolidated Appropriations Act, 2021.²⁸ It made many changes to the structure of the PPP and extended the PPP application deadline until March 31, 2021.²⁹

This Guide refers to this as the “Economic Aid Act.”

4. Paycheck Protection Program Flexibility Act (June 5, 2020)

The Paycheck Protection Program Flexibility Act of 2020, which became law on June 5, 2020, changed some of the PPP loan forgiveness and loan maturity rules from the CARES Act.³⁰

This Guide refers to this as the “Flexibility Act.”

5. Paycheck Protection and Health Care Enhancement Act (April 24, 2020)

The Paycheck Protection and Health Care Enhancement Act, which became law on April 24, 2020, changed some of the PPP rules from the CARES Act.³¹

This Guide refers to this as the “Enhancement Act.”

[1799/#:~:text=H.R.%201799%2C%20the%20%E2%80%9CPPP%20Extension,received%20by%20the%20application%20deadline.](#)

²⁵ American Rescue Plan Act of 2021, 117 Pub. Law 2 (March 11, 2021). As a bill it was known as H.R. 1319. A copy can be found here: <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>.

²⁶ See generally American Rescue Plan Act of 2021 § 5001 (March 11, 2021).

²⁷ Consolidated Appropriations Act, 2021, 116 Pub. Law 260, Division N, Title III, Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) (December 27, 2020). As a bill it was known as H.R. 133. A copy can be found here: <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

²⁸ Consolidated Appropriations Act, 2021, 116 Pub. Law 260 (December 27, 2020). As a bill it was known as H.R. 133. A copy can be found here: <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

²⁹ Economic Aid Act § 323(c) (December 27, 2020).

³⁰ Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act), 116 Public Law 142, 134 Stat. 641 (June 5, 2020). As a bill, it was known as H.R. 7010. A copy can be found here: <https://www.congress.gov/116/plaws/publ142/PLAW-116publ142.pdf>.

³¹ Paycheck Protection Program and Health Care Enhancement Act (Enhancement Act), 116 Pub Law 139, 134 Stat. 620 (April 24, 2020). As a bill, it was known as H.R. 266. A copy can be found here: <https://www.congress.gov/116/bills/hr266/BILLS-116hr266enr.pdf>.

6. Coronavirus Aid, Relief, and Economic Security Act (March 27, 2020)

The Coronavirus Aid, Relief, and Economic Security Act, which became law on March 27, 2020, first created the PPP.³²

This Guide refers to this as the “CARES Act.”

B. 2021 Rules for PPP

The following rules, which were published in the Federal Register, and will appear in the Code of Federal Regulations, provide important details for how the PPP will operate in its 2021 version.

1. Interim Final Rule (March 22, 2021)

On March 22, 2021, SBA published in the Federal Register an interim final rule outlining changes made to PPP following the passing of the American Rescue Plan Act.³³ The changes made by this rule apply to all PPP loans approved after March 11, 2021, as well as all PPP loan forgiveness applications submitted after March 11, 2021.

This Guide refers to this as the “Rescue Plan PPP Rule.”

2. Interim Final Rule (March 8, 2021)

On March 8, 2021, SBA published in the Federal Register an interim final rule outlining changes that allow some IRS Schedule C income tax filers to calculate their PPP loan amount using gross income.³⁴ The rules published under this rule apply to all PPP loans approved after March 4, 2021.

This Guide refers to this as the “Amended PPP Loan Calculation Rule.”

3. Interim Final Rule (February 5, 2021)

On February 5, 2021, SBA published in the Federal Register an interim final rule outlining the changes made by the Economic Aid Act with respect to PPP loan forgiveness.³⁵ The rules published under this interim final rule are effective February 3, 2021, and apply to loans for which a forgiveness payment has not been provided by SBA as of December 27, 2020.

³² CARES Act § 1102 (March 27, 2020). The CARES Act is the Coronavirus Aid, Relief, and Economic Security Act, 116 Public Law 136, 134 Stat. 281 (March 27, 2020). As a bill, it was known as H.R. 748 (March 27, 2020). A copy can be found here: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

³³ Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by American Rescue Plan Act (Rescue Plan PPP Rule), 86 Fed. Reg. 15,083 (March 22, 2021) (to be codified at 13 C.F.R. pts. 120, 121), at: <https://www.govinfo.gov/content/pkg/FR-2021-03-22/pdf/2021-05930.pdf>.

³⁴ Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to Loan Amount Calculation and Eligibility (Amended PPP Loan Calculation Rule), 86 Fed. Reg. 13,149 (March 8, 2021) (to be codified at 13 C.F.R. pt. 120), at: <https://www.govinfo.gov/content/pkg/FR-2021-03-08/pdf/2021-04795.pdf>.

³⁵ Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act (Amended PPP Loan Forgiveness Rule), 86 Fed. Reg. 8283 (February 5, 2021) (to be codified at 13 C.F.R. pt. 120), at: <https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02314.pdf>.

This Guide refers to this as the “Amended PPP Loan Forgiveness Rule.”

4. Interim Final Rule (January 14, 2021)

On January 14, 2021, SBA published in the Federal Register an interim final rule outlining the changes to PPP created by the Economic Aid Act.³⁶

This Guide refers to this as the “First Draw PPP Rule.”

5. Interim Final Rule (January 14, 2021)

On January 14, 2021, SBA published in the Federal Register a second interim final rule outlining the requirements for those who seek a second PPP loan. SBA calls these “second draw PPP loans.”³⁷

This Guide refers to this as the “Second Draw PPP Rule.”

C. 2020 Rules for PPP

The following rules, most of which were published in the Federal Register in 2020 and will appear in the Code of Federal Regulations, provide important details for how the PPP was first structured and how it has evolved over time.

1. Interim Final Rule (June 26, 2020)

On June 26, 2020, an interim final rule from the SBA was published in the Federal Register that reflects PPP loan forgiveness changes made by the Flexibility Act.³⁸

2. Interim Final Rule (June 26, 2020)

On June 26, 2020, an interim final rule from the SBA was published in the Federal Register that outlines changes to PPP eligibility made by the Flexibility Act.³⁹

This Guide refers to this as the “PPP Interim Final Rule—Additional Eligibility.”

³⁶ Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act, Interim Final Rule (First Draw PPP Rule), 86 Fed. Reg. 3692 (January 14, 2021) (to be codified at 13 C.F.R. pts. 113, 120, 121), at: <https://www.govinfo.gov/content/pkg/FR-2021-01-14/pdf/2021-00451.pdf>.

³⁷ Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans, Interim Final Rule (Second Draw PPP Rule), 86 Fed. Reg. 3712 (January 14, 2021) (to be codified at 13 C.F.R. pts. 120, 121), at: <https://www.govinfo.gov/content/pkg/FR-2021-01-14/pdf/2021-00452.pdf>.

³⁸ PPP Interim Final Rule—Revisions to Loan Forgiveness, 85 Fed. Reg. 38,304 (June 26, 2020), at: <https://www.govinfo.gov/content/pkg/FR-2020-06-26/pdf/2020-13782.pdf>.

³⁹ Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Revisions to First Interim Final Rule, Interim Final Rule, 85 Fed. Reg. 38,301 (June 26, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/PPP--IFR--Additional-Eligibility-Revisions-to-First-Interim-Final-Rule.pdf>.

3. Interim Final Rule (June 19, 2020)

On June 19, 2020, SBA published an interim final rule in the Federal Register that reflects changes to the forgiveness rules for PPP loans made by the Flexibility Act.⁴⁰

This rule clarifies the costs that are eligible for forgiveness under the PPP.⁴¹ In addition, the rule provides that in order to receive forgiveness of the entire PPP loan, a borrower must spend at least 60 percent of the funds on payroll expenses. Originally, 75 percent was required under the CARES Act.

This Guide refers to this as the “PPP Interim Final Rule—Revisions to the Third and Sixth Interim Final Rules.”

4. Interim Final Rule (June 16, 2020)

On June 16, 2020, SBA published an interim final rule in the Federal Register that implements changes to the First Official PPP Interim Final Rule that were made in the Flexibility Act.⁴²

Changes made by this rule include lengthening the maturity of PPP loans from two years to five years.⁴³ The rule also extends the PPP loan forgiveness period from eight weeks to twenty-four weeks.⁴⁴

This Guide refers to this as the “PPP Interim Final Rule—Revisions to First Interim Final Rule.”

5. Interim Final Rule (June 1, 2020)

On June 1, 2020, the SBA and Treasury Department published an interim final rule in the Federal Register that provides details on PPP loan forgiveness.⁴⁵ The Treasury Department published an unofficial version of this rule on May 22, 2020.

This Guide refers to this as the “First PPP Loan Forgiveness Interim Final Rule.”

⁴⁰ Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to the Third and Sixth Interim Final Rules, Interim Final Rule, 85 Fed. Reg. 36,997 (June 19, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://www.govinfo.gov/content/pkg/FR-2020-06-19/pdf/2020-13293.pdf>.

⁴¹ PPP Interim Final Rule—Revisions to the Third and Sixth Interim Final Rules, 85 Fed. Reg. 36,997, 36,998-36,999 (June 19, 2020).

⁴² Business Loan Program Temporary Changes; Paycheck Protection Program—Revisions to First Interim Final Rule, Interim Final Rule, 85 Fed. Reg. 36,308 (June 16, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://www.govinfo.gov/content/pkg/FR-2020-06-16/pdf/2020-12909.pdf>.

⁴³ PPP Interim Final Rule—Revisions to First Interim Final Rule, 85 Fed. Reg. 36,308, 36,310 (June 16, 2020); Treasury Department, Paycheck Protection Program Loans Frequently Asked Questions (FAQs), Question 49 (June 25, 2020).

⁴⁴ PPP Interim Final Rule—Revisions to First Interim Final Rule, 85 Fed. Reg. 36,308, 36,310 (June 16, 2020) (to be codified at 13 C.F.R. pt. 120).

⁴⁵ Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Loan Forgiveness, Interim Final Rule (Loan Forgiveness Interim Final Rule), 85 Fed. Reg. 33,004 (June 1, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-11536.pdf>.

6. Interim Final Rule (April 30, 2020)

On April 30, 2020, the Treasury Department published an interim final rule in the Federal Register that provides details on PPP loan eligibility for seasonal employers.⁴⁶

This Guide refers to this as the “PPP Seasonal Employer Interim Final Rule.”

7. Interim Final Rule (April 20, 2020)

On April 20, 2020, SBA published another interim final rule that provides a detailed discussion of PPP rules for self-employed individuals.⁴⁷ This rule gives information about those who use a 2019 IRS Form 1040 Schedule C, “Profit or Loss from Business,” with their federal income taxes. As will be discussed below, not all self-employed individuals use a Schedule C, including most farmers, and therefore the applicability of this rule to other self-employed individuals was uncertain.

This Guide refers to this as the “Self-Employed PPP Interim Final Rule.”

8. Interim Final Rule (April 15, 2020—Second Rule of the Day)

On April 15, 2020, SBA published a second interim final rule in the Federal Register that provides more information on how SBA affiliation rules apply to the PPP.⁴⁸

This Guide refers to this as the “Affiliation Interim Final Rule.”

9. Interim Final Rule (April 15, 2020—First Rule of the Day)

On April 15, 2020, SBA published in the Federal Register an interim final rule that appears to be nearly identical to the Initial PPP Interim Final Rule and is likely the official version of that rule.⁴⁹

This Guide refers to this as the “First Official PPP Interim Final Rule.”

10. Interim Final Rule (April 2, 2020)

On April 2, 2020, SBA released an interim final rule for PPP that did not appear in the Federal Register. It was instead posted on SBA’s website.⁵⁰ It seems this rule was the

⁴⁶ Small Business Administration Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Criterion for Seasonal Employers, Interim Final Rule, 85 Fed. Reg. 23,917 (April 30, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Criterion-for-Seasonal-Employers.pdf>.

⁴⁷ Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Eligibility Criteria and Requirements for Certain Pledges of Loans, Interim Final Rule (Self-Employed PPP Interim Final Rule), 85 Fed. Reg. 21,747 (April 20, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>.

⁴⁸ Business Loan Program Temporary Changes; Paycheck Protection Program, Interim Final Rule (Affiliation Interim Final Rule), 85 Fed. Reg. 20,817 (April 15, 2020) (to be codified at 13 C.F.R. pt. 121), at: <https://home.treasury.gov/system/files/136/SBA%20IFR%202.pdf>.

⁴⁹ Business Loan Program Temporary Changes; Paycheck Protection Program, Interim Final Rule (First Official PPP Interim Final Rule), 85 Fed. Reg. 20,811 (April 15, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>.

⁵⁰ Business Loan Program Temporary Changes; Paycheck Protection Program, Small Business Administration, Interim Final Rule (Initial PPP Interim Final Rule) (to be codified at 13 C.F.R. part

basis for SBA's first administration of the PPP, though SBA said the rule would not become official until it was published in the Federal Register.⁵¹

This Guide refers to this as the "Initial PPP Interim Final Rule."

11. Other Official 2020 Rules for PPP (Released Since April 24, 2020)

SBA and the Department of Treasury have released several other rules for PPP that are of less direct importance for most family farmers.⁵²

120), at: <https://content.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL.pdf>. SBA released this version of the rules on April 2, 2020.

⁵¹ Initial PPP Interim Final Rule, at 1 (April 2, 2020).

⁵² These additional rules include: (1) Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility, Interim Final Rule, 85 Fed. Reg. 23,450 (April 28, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Requirements-for-Promissory-Notes-Authorizations-Affiliation-and-Eligibility.pdf>; (2) Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Disbursements, Interim Final Rule, 85 Fed. Reg. 26,321 (May 4, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Disbursements.pdf>; (3) Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders, Interim Final Rule, 85 Fed. Reg. 26,324 (May 4, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/IFR--Corporate-Groups-and-Non-Bank-and-Non-Insured-Depository-Institution-Lenders.pdf>; (4) Business Loan Program Temporary Changes; Paycheck Protection Program—Nondiscrimination and Additional Eligibility Criteria, Interim Final Rule, 85 Fed. Reg. 27,287 (May 8, 2020) (to be codified at 13 C.F.R. pts. 113, 120), at: <https://home.treasury.gov/system/files/136/IFR-Nondiscrimination-and-Additional-Eligibility-Criteria.pdf>; (5) Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request, Interim Final Rule, 85 Fed. Reg. 29,845 (May 19, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Extension-of-Limited-Safe-Harbor-with-Respect-to-Certification-Concerning-Need-for-PPP-Loan-Request.pdf>; (6) Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Increases, Interim Final Rule, 85 Fed. Reg. 29,842 (May 19, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Loan-Increases.pdf>; (7) Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Entities with Foreign Affiliates, Interim Final Rule, 85 Fed. Reg. 30,835 (May 21, 2020) (to be codified at 13 C.F.R. pts. 120, 121), at: <https://www.govinfo.gov/content/pkg/FR-2020-05-21/pdf/2020-10967.pdf>; (8) Business Loan Program Temporary Changes; Paycheck Protection Program—Second Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan and Lender Reporting, Interim Final Rule, 85 Fed. Reg. 31,357 (May 26, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/IFR--Second-Extension-of-Limited-Safe-Harbor-with-Respect-to-Certification-Concerning-Need-for-PPP-Loan-and-Lender-Reporting-5-20-2020.pdf>; (9) Business Loan Program Temporary Changes; Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, 85 Fed. Reg. 33,010 (June 1, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-11533.pdf>; (10) Business Loan Program Temporary Changes; Paycheck Protection Program—Additional Revisions to First Interim Final Rule, Interim Final Rule, 85 Fed. Reg. 36,717 (June 18, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://www.govinfo.gov/content/pkg/FR-2020-06-18/pdf/2020-13130.pdf>; (11) Business Loan Program Temporary Changes; Paycheck Protection Program—Certain Eligible Payroll Costs, Interim Final Rule, 85 Fed. Reg. 39,066 (June 30, 2020) (to be codified at 13 C.F.R. pt. 120), at: <https://home.treasury.gov/system/files/136/PPP--IFR--Certain-Eligible-Payroll-Costs.pdf>.

12. General SBA Rules (Created Before the COVID-19 Crisis)

In some cases, the PPP relies on rules created by SBA that apply to other SBA programs as well.⁵³

D. Other Official Materials (Released Since March 27, 2020)

In addition to the PPP rules mentioned above, other official materials have been released in various way since the enactment of the CARES Act on March 27, 2020, and the Economic Aid Act on December 27, 2020. SBA has designed separate websites for first draw PPP loans and second draw PPP loans.⁵⁴ The SBA and Treasury Department have a Paycheck Protection Program Loans Frequently Asked Questions (FAQs) page that it updates sometimes.⁵⁵ SBA has issued two different top-line overviews. One is for first draw PPP loans and another is for second draw PPP loans.⁵⁶ Finally, SBA and the Treasury Department have also published detailed guides to how first draw and second draw PPP loans are calculated for various businesses.⁵⁷

⁵³ For example, some SBA affiliation rules also apply to PPP borrowers. See 13 C.F.R. § 121.301 (2021).

⁵⁴ The primary SBA website for PPP is at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>. For first draw PPP loans, see: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/first-draw-ppp-loans>. For second draw PPP loans, see: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/second-draw-ppp-loans>.

⁵⁵ SBA and Treasury Department, Paycheck Protection Program Loans Frequently Asked Questions (FAQs) (March 12, 2021), at: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>. This FAQ page notes that it does not carry the force and effect of law beyond what is stated in the statutes and regulations.

⁵⁶ SBA, Top-Line Overview of First Draw PPP, Paycheck Protection Program First Draw Loans (January 8, 2021), at: <https://www.sba.gov/document/support-top-line-overview-first-draw-ppp>; SBA website, Top-Line Overview of Second Draw PPP, Paycheck Protection Program Second Draw Loans (January 8, 2021), at: <https://www.sba.gov/document/support-top-line-overview-second-draw-ppp>.

⁵⁷ See SBA and Treasury Department, PPP How to Calculate Maximum Amounts for First Draw PPP Loans and What Documentation to Provide—By Business Type (March 12, 2021) (SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans), at: <https://home.treasury.gov/system/files/136/PPP--How-to-Calculate-Maximum-Loan-Amounts-for-First-Draw-PPP-Loans-and-What-Documentation-to-Provide-By-Business-Type.pdf>; SBA and Treasury Department, Second Draw Paycheck Protection Program (PPP) Loans: How to Calculate Revenue Reduction and Maximum Loan Amounts Including What Documentation to Provide (March 12, 2021) (SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans), at: <https://home.treasury.gov/system/files/136/Second-Draw-PPP-Loans--How-to-Calculate-Revenue-Reduction-Maximum-Loan-Amounts-Including-Documentation-Provide1192021.pdf>.

Chapter Two: PPP Eligibility

I. General PPP Eligibility Rules for First Draw and Second Draw Loans

The following sections describe the PPP eligibility rules, including any modifications made by more recent legislation, such as the Economic Aid Act. Unless noted otherwise, these rules apply to both first draw and second draw PPP loans.

A. Eligible Businesses

In general, two categories of businesses are eligible for PPP. In different ways, each of these categories is based on size and requires that businesses be relatively small in order to qualify for PPP. The eligibility rules for businesses apply to agricultural producers, farmers, and ranchers.⁵⁸ The vast majority of farms in the United States are small enough to fall within one of these categories and be eligible for PPP.

1. Various Kinds of Smaller Businesses

A variety of smaller entities are eligible for first draw and second draw PPP loans.⁵⁹ These include businesses in general, such as corporations and partnerships.⁶⁰ Also eligible are tribal business concerns.⁶¹ In addition, tax-exempt nonprofits,⁶² and tax-exempt veterans organizations can be eligible.⁶³

With the passing of the Economic Aid Act and the American Rescue Plan Act, other types of business can be eligible for PPP.⁶⁴ These include housing cooperatives,⁶⁵ what are known as section 501(c)(6) organizations,⁶⁶ destination marketing organizations,⁶⁷

⁵⁸ SBA and Treasury Department, PPP FAQs, Question 34 (March 12, 2021).

⁵⁹ See generally Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021).

⁶⁰ For example, the first draw and second draw PPP application forms allow applicants to check boxes if they are, among other things, a: (1) partnership; (2) C Corporation; (3) S Corporation; (4) limited liability company (LLC); or (5) "other." PPP Borrower Application Form Revised, SBA Form 2483, at 1 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 1 (March 18, 2021).

⁶¹ An eligible tribal business concern is based on 15 U.S.C. § 657a(b)(2)(C). See First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021).

⁶² Eligible nonprofits are those described in the Internal Revenue Code as section 501(c)(3) organizations. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021).

⁶³ Eligible veterans organizations are those described in the Internal Revenue Code as section 501(c)(19) organizations. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021).

⁶⁴ Economic Aid Act §§ 311, 316, 317(a) (December 27, 2020); American Rescue Plan Act § 5001 (March 11, 2021); Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085, 15,087 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021).

⁶⁵ Eligible housing cooperatives are defined in section 216(b) of the Internal Revenue Code. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3697 (January 14, 2021).

⁶⁶ In general, these are business leagues, chambers of commerce, boards of trade, and similar organizations. For additional eligibility requirements for 501(c)(6) organizations, see First Draw PPP Rule, 86 Fed. Reg. 3692, 3697 (January 14, 2021).

⁶⁷ For additional eligibility requirements for destination marketing organizations, see First Draw PPP Rule, 86 Fed. Reg. 3692, 3697 (January 14, 2021).

accommodation and food service businesses that have a NAICS code beginning with 72,⁶⁸ and others.⁶⁹

Small agricultural cooperatives are eligible for a second draw loan.⁷⁰ They are likely eligible for a first draw loan as well.⁷¹

Although the same types of businesses are generally eligible for both first draw and second draw PPP loans, the maximum number of employees that an eligible business may have differs between the two loans. These limits, which will affect very few farmers, are described in the next sections.

a. First Draw PPP Loans—500 Employee Max

As a general rule, to be eligible for a first draw PPP loan, eligible entities must be small in that they generally must not have more than 500 employees.⁷² This rule applies to business concerns, tribal business concerns, 501(c)(3) nonprofits, veterans organizations, accommodation and food service businesses with a NAICS code beginning with 72, and other entities not usually associated with farming.⁷³ For this purpose, part-time employees, full-time employees, and people hired on another basis, all count as individual employees.⁷⁴

It is possible that a business, 501(c)(3) nonprofit, veterans organization or tribal business concern can be eligible for a first draw PPP loan if it has more than 500 employees, so long as it meets SBA's employee-based or revenue-based size standards for the industry in which it operates, or SBA's alternative size standards.⁷⁵

⁶⁸ In general, accommodation and food service businesses that have a NAICS code beginning with 72 include hotels, restaurants, and bars. See NAICS Six Digit NAICS Codes and Titles (March 17, 2021).

⁶⁹ Also eligible for PPP are: (1) some non-profit or tax-exempt news organizations and public broadcasting entities (as defined in 47 U.S.C. § 397(11)); (2) tax-exempt nonprofit organizations, including electric and telephone cooperatives, other than those described in the IRS Code sections 501(c)(3), (4), (6), or (19); and (3) internet publishing organizations that have a NAICS code of 519130. For additional eligibility requirements for these entities, see Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085-15,086 (March 22, 2021).

⁷⁰ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,087 (March 22, 2021).

⁷¹ The SBA and Treasury FAQ states that small agricultural cooperatives are eligible for PPP loans so long as all other eligibility requirements are met. See SBA and Treasury Department, PPP FAQs, Question 35 (March 12, 2021). Small agricultural cooperatives are not mentioned in the first draw rule. First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021). They are mentioned in the second draw rule. Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021). They are also mentioned as being eligible for second draw loans in the Rescue Plan PPP Rule. Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,087 (March 22, 2021).

⁷² Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021).

⁷³ This includes certain news organizations, public broadcasting entities, and internet publishing organizations that have 500 or fewer employees. Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021).

⁷⁴ CARES Act § 1102(a)(2) (March 27, 2020); SBA and Treasury Department, PPP FAQs, Question 36 (March 12, 2021).

⁷⁵ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 2 (March 12, 2021). The vast majority of farms in the United States have under 500 employees and therefore will be eligible for PPP without needing to meet SBA's size-based industry standards. This Guide does

In order for housing cooperatives, 501(c)(6) organizations, or destination marketing organizations to be eligible for a first draw PPP loan, they may only have 300 or fewer employees.⁷⁶

b. Second Draw PPP Loans—300 Employee Max

With the passing of the Economic Aid Act, eligible entities for second draw PPP loans must have 300 or fewer employees.⁷⁷ For this purpose, part-time employees, full-time employees, and people hired on another basis all count as individual employees.⁷⁸ This rule applies to all eligible entities applying for a second draw PPP loan.⁷⁹ The only exception to the rule applies to some businesses that have more than one physical location and meet alternative rules set by SBA.

2. Small Business Concerns—First Draw Only

What SBA calls “small business concerns” are eligible for first draw PPP loans only.⁸⁰ SBA rules define a small business concern.⁸¹ This definition is very detailed, and every aspect must be met in order to qualify for PPP as a small business concern. A business that meets SBA’s definition of a small business concern does not need to have fewer than 500 employees in order to be eligible for a first draw PPP loan.⁸²

not discuss those standards in detail. For more information on SBA’s size-based industry standards, see Small Business Association (SBA), Size Standards, at: www.sba.gov/size.

- ⁷⁶ Economic Aid Act §§ 316-318 (December 27, 2020); Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 3 (March 18, 2021); SBA and Treasury Department, PPP FAQs, Question 2 (March 12, 2021). In addition, tax-exempt nonprofit organizations, including electric and telephone cooperatives, other than those described in the IRS Code sections 501(c)(3), (4), (6), or (19), must also have 300 or fewer employees to be eligible.
- ⁷⁷ Economic Aid Act §§ 311, 316, 318 (December 27, 2020); Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,087 (March 22, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 1 (March 18, 2021).
- ⁷⁸ CARES Act § 1102(a)(2) (March 27, 2020); SBA and Treasury Department, PPP FAQs, Question 36 (March 12, 2021).
- ⁷⁹ In general, SBA’s alternative rules require that some eligible businesses have no more than 300 employees per physical location. For additional requirements, see Economic Aid Act § 311 (December 27, 2020); Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,087 (March 22, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717-3718 (January 14, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021).
- ⁸⁰ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Questions 2, 3, 34, 63 (March 12, 2021). Small business concerns are defined in 15 U.S.C. § 632. SBA also has extensive rules defining small businesses. See 13 C.F.R. part 121, subpart A (2020). Some of these rules are not in effect for PPP due to the CARES Act. The definition of a small business concern is also found in SBA, Small Business Compliance Guide: Size and Affiliation (June 2018), at: https://www.sba.gov/sites/default/files/2018-09/2018-07-13%20AFFILIATION%20GUIDE_Updated%20%281%29.pdf.
- ⁸¹ For SBA’s definition of a small business concern, see 15 U.S.C. § 632(a). A more detailed definition and explanation of a small business concern is also found in SBA, Small Business Compliance Guide: Size and Affiliation (June 2018), at: https://www.sba.gov/sites/default/files/2018-09/2018-07-13%20AFFILIATION%20GUIDE_Updated%20%281%29.pdf.
- ⁸² CARES Act § 1102(a)(2) (March 27, 2020); First Official PPP Interim Final Rule, 85 Fed. Reg. 20,811, 20,812 (April 15, 2020); Initial PPP Interim Final Rule, at 6 (April 2, 2020). See also, SBA and Treasury Department, PPP FAQs, Question 2 (March 12, 2021). The Treasury’s PPP FAQ page

3. Seasonal Businesses

Seasonal businesses can be eligible for first draw and second draw PPP loans.⁸³ As defined in the Economic Aid Act, a seasonal employer is a business that either: (1) does not operate for more than seven months in any calendar year; or (2) had gross receipts for any six months of that year that were not more than 33.33 percent of the gross receipts for the other six months of that year.⁸⁴

B. Eligible Self-Employed Individuals, Sole Proprietorships, and Independent Contractors—Including Farmers and Ranchers

Under the rules for both first draw and second draw PPP loans, self-employed individuals, sole proprietorships, and independent contractors are eligible as borrowers.⁸⁵ The eligibility rules for self-employed borrowers do not apply to partners in a partnership, because individual partners may not file separate PPP loan applications.⁸⁶ Instead, the partnership itself must file a PPP loan application and report the self-employment income of the general active partners as payroll costs.⁸⁷

To eligible for a PPP loan, a self-employed individual, including a self-employed farmer, must meet four requirements.

First, the self-employed person must have been in operation on February 15, 2020.⁸⁸

Second, a self-employed person must have self-employment income.⁸⁹ This can be, for example, income as an independent contractor or a sole proprietor.

Third, the self-employed person must have a principal place of residence in the United States.⁹⁰

provides the example that an eligible small business concern could include a business that meets SBA's "alternative size standard" of having a tangible net worth of not more than 15 million dollars, and an average net income (after Federal income taxes) for the previous two full fiscal years before the date of the PPP application of not more than five million dollars.

⁸³ See, for example, First Draw PPP Rule, 86 Fed. Reg. 3692, 3696 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

⁸⁴ Economic Aid Act § 315 (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

⁸⁵ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085, 15,087 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021). The first draw and second draw PPP application forms allow applicants to check boxes if they are, among other things, a: (1) sole proprietor; (2) independent contractor; or (3) eligible self-employed individual. PPP Borrower Application Form Revised, SBA Form 2483, at 1 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 1 (March 18, 2021).

⁸⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3695-3696 (January 14, 2021).

⁸⁷ For additional information on how partnerships should calculate their PPP loan amount, see SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 4 (March 12, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts Question 4 (March 12, 2021).

⁸⁸ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695, 3701 n. 55, 3,705 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 2 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 2 (March 18, 2021),

⁸⁹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3695, 3701 n. 55 (January 14, 2021).

⁹⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 1, 3 (March 12, 2021); SBA and

Fourth, the self-employed person must have filed, or intend to file, a 2019 or 2020 IRS Form 1040 Schedule C.⁹¹ Farmers and ranchers must have filed, or intend to file, a 2019 or 2020 IRS Form 1040 Schedule F or an equivalent schedule.⁹²

C. Farms and SBA Affiliation Rules

In order to be eligible for a PPP loan, the borrower must meet what SBA calls “affiliation” rules.⁹³ The goal of these rules is to address the possibility that a large company that would not be eligible for an SBA small business loan (called a Section 7(a) loan) might control a small company that would otherwise be eligible for such a loan. SBA affiliation rules try to identify when a smaller company is under the control of another company such that the smaller company does not operate independently. In those situations, SBA will not make a loan to the smaller company. Under the CARES Act, the Economic Aid Act, the American Rescue Plan Act, and related regulation, SBA affiliation rules are waived for certain types of businesses.⁹⁴

The first detailed affiliation rules for PPP loans were published by SBA on April 15, 2020, in the form of an interim final rule in the Federal Register that this Guide refers to as the Affiliation Interim Final Rule.⁹⁵ In the Affiliation Interim Final Rule, SBA clarified that in most cases businesses will be considered together with their affiliates for purposes of PPP

Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts Questions 1, 3 (March 12, 2021).

⁹¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3695-3696 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021).

⁹² First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 n. 55 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021).

⁹³ First Draw PPP Rule, 86 Fed. Reg. 3692, 3698-3699 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3714-3715 (January 14, 2021). The affiliation rules that apply to PPP borrowers are found at 13 C.F.R. § 121.301 (2020). The affiliation rules found at 13 C.F.R. § 121.103 may not apply to PPP borrowers. Compare First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021) with SBA and Treasury Department, PPP FAQs, Question 5 (March 12, 2021)

⁹⁴ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,086-15,087 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695, 3698-3699 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3714-3715 (January 14, 2021); Economic Aid Act § 311 (December 27, 2020); CARES Act § 1102(a)(2) (March 27, 2020). Specifically, the affiliation rules at 13 C.F.R. § 121.301 are waived for: (1) any business concern with either 500 or fewer employees (for first draw loans) or 300 or fewer employees (for second draw loans) that, on the day the loan is disbursed, is assigned a North American Industry Classification System code beginning with 72; (2) any business concern that operates as a franchise and 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; (4) any business concern that either employees 500 or fewer employees (for first draw loans) or 300 or fewer employees (for second draw loans) and is majority owned or controlled by a business that is assigned an NAICS code beginning with 51110, 5151, or 519130; and (5) any nonprofit organization that is assigned an NAICS code beginning with 5151. See Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,086-15,087 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695, 3695 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718 (January 14, 2021). In addition, SBA rules also exempt qualified faith-based organizations from SBA's affiliation rules in situations where the affiliation rules would “substantially burden those organizations’ religious exercise,” and neither SBA nor lenders will assess the reasonableness of a faith-based organization’s determination of whether it is exempt from SBA’s affiliation rules. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021).

⁹⁵ Affiliation Interim Final Rule, 85 Fed. Reg. 20,817 (April 15, 2020).

eligibility.⁹⁶ After the passing of the Economic Aid Act on December 27, 2020, SBA extended the affiliation rules with some slight changes.⁹⁷

Under the current affiliation rules, there are three primary ways to meet the affiliation requirements and be eligible for PPP. First, a borrower is eligible for PPP if the borrower and its affiliates, combined, can meet the SBA definition of a small business.⁹⁸ Second, a borrower can be eligible for PPP if, together with its affiliates, it is a tax-exempt nonprofit, tax-exempt veterans organization, tribal business concern, a section 501(c)(6) organization, a destination marketing organization, or any other business concern.⁹⁹ Finally, a borrower can be eligible for PPP if it, together with its affiliates, has either: (1) for first draw loans, 500 or fewer employees per location and is owned or controlled by a newspaper or a radio and television broadcaster; or (2) for second draw loans, 300 or fewer employees and is owned or controlled by a newspaper publisher or a radio or television broadcaster. Other rules apply for this eligibility.

Affiliation rules would often be a small technical detail, but they have been important and controversial when it comes to some SBA loans to farms.¹⁰⁰ In the past, SBA has made significant loans to contract poultry growers. An argument, however, has been made that contract poultry farmers are so closely tied to poultry integrators that they should not be allowed to receive SBA loans under the normal Section 7(a) SBA loan program.¹⁰¹ In response to that argument, and in an attempt to ensure that “only independently owned and operated small businesses” receive Section 7(a) SBA loans, an interim final rule was published that went into effect on March 11, 2020.¹⁰² This rule changed the affiliation rules to make it harder for some businesses, such as contract poultry growers, to receive Section 7(a) SBA loans.¹⁰³ The CARES Act, however, rescinded that interim final rule.¹⁰⁴ It is therefore unclear, for purposes of PPP loans, how SBA will treat certain agricultural businesses that arguably are affiliated with larger businesses. This means that farms that

⁹⁶ Affiliation Interim Final Rule, 85 Fed. Reg. 20,817, 20,818 (April 15, 2020).

⁹⁷ Economic Aid Act § 317(b) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3698-3699 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3714-3715 (January 14, 2021).

⁹⁸ First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3714-3715 (January 14, 2021). The borrower must be a small business as set out in the Small Business Act. The relevant section of the Small Business Act is at 15 U.S.C. § 632(a).

⁹⁹ The CARES Act states that the affiliation standards found in 13 C.F.R. § 121.103 apply to tax-exempt nonprofits and tax-exempt veterans organizations just as they apply to small business concerns. CARES Act § 1102(a)(2) (March 27, 2020). However, the Affiliation Interim Final Rule as well as the First Draw PPP Rule clarify that the applicable affiliation standards for tax-exempt nonprofits and tax-exempt veterans organizations are found at 13 C.F.R. § 121.301, and not 13 C.F.R. § 121.103. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021); Affiliation Interim Final Rule, 85 Fed. Reg. 20,817, 20,818-20,819 (April 15, 2020).

¹⁰⁰ See, for example, the SBA, Office of Inspector General, Evaluation of SBA 7(A) Loans Made to Poultry Farmers, Report Number 18-13 (March 6, 2018), at: <https://www.sba.gov/sites/default/files/2019-07/SBA-OIG-Report-18-13.pdf>. In this Report, SBA's Office of Inspector General concluded that loans to contract poultry farmers had violated SBA affiliation rules.

¹⁰¹ See SBA, Office of Inspector General, Evaluation of SBA 7(A) Loans Made to Poultry Farmers, Report Number 18-13 (March 6, 2018), at: <https://www.sba.gov/document/report-18-13-evaluation-sbas-7a-loans-poultry-farmers>.

¹⁰² Express Loan Programs: Affiliation Standards, 85 Fed. Reg. 7622, 7638 (Feb. 10, 2020) (to be codified at 13 C.F.R. pts. 103, 120, and 121).

¹⁰³ Express Loan Programs: Affiliation Standards, 85 Fed. Reg. 7622, 7651 (Feb. 10, 2020) (to be codified at 13 C.F.R. pts. 103, 120, and 121).

¹⁰⁴ CARES Act § 1102(e) (March 27, 2020) (rescinding Express Loan Programs; Affiliation Standards, 85 Fed. Reg. 7622 (Feb. 10, 2020) (to be codified at 13 C.F.R. pts. 103, 120, and 121).

have production contracts—such as those to raise poultry or hogs—may be in danger of not being eligible for PPP because of affiliation rules. It may also mean that larger value-added enterprises, with several connected business units, may not be eligible.

D. Immigration Status

Immigration status appears not to play any role in the PPP program—either for applicants or an applicant's employees.

E. Must Have Been in Operation as of February 15, 2020—With One Exception

To be eligible as a PPP borrower, the business, sole proprietorship, independent contractor, or self-employed individual must have been in operation as of February 15, 2020.¹⁰⁵

If a seasonal business was dormant or not fully operating as of February 15, 2020, it may still be eligible for PPP if it was in operation for any twelve-week period between February 15, 2019, and February 15, 2020.¹⁰⁶ This exception to the February 15, 2020, rule could be especially helpful for farms.

F. Must Have Paid Employees or Be Self-Employed

An eligible business must have employees for whom it paid salaries and payroll taxes, or paid independent contractors (as reported on IRS Form 1099-MISC) on or around February 15, 2020.¹⁰⁷ Only employees that have their principal place of residence in the United States can be counted as employees for purposes of the loan.¹⁰⁸

A business without employees can be eligible if the borrower was a self-employed individual, a sole-proprietor, or an independent contractor on February 15, 2020.¹⁰⁹

¹⁰⁵ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695, 3698 (January 14, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 2 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 2 (March 18, 2021); SBA and Treasury Department, PPP FAQs, Question 38 (March 12, 2021).

¹⁰⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3696 (January 14, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 4 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 5 (March 18, 2021); SBA and Treasury Department, PPP FAQs, Question 9 (March 12, 2021). Previous guidance for PPP loans issued in 2020 provided that seasonal employers could be eligible for PPP if they were in operation for any consecutive twelve-week period between May 1, 2019 and September 15, 2019. See PPP Seasonal Employer Interim Final Rule, 85 Fed. Reg. 23,917, 23,918 (April 30, 2020).

¹⁰⁷ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3695 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717, 3721 (January 14, 2021).

¹⁰⁸ First Draw PPP Rule, 86 Fed. Reg. 3692, 3700-3701, 3,705 (January 14, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 4 (March 18, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 5 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 5 (March 18, 2021).

¹⁰⁹ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,085 (March 22, 2021).

G. Other Eligibility Rules—What Makes Borrowers Ineligible

SBA rules explain that certain potential borrowers are not eligible for PPP.¹¹⁰ Unless noted otherwise, these rules apply to both first draw and second draw PPP loans.

1. Delinquent or Default on Federal Loan

Anyone who has previously received a direct or guaranteed loan from SBA or any other Federal agency, including under USDA's Farm Service Agency (FSA) Farm Loan Program, and is delinquent on the loan or defaulted on it within the past seven years is not eligible for either a first draw or second draw PPP loan.¹¹¹ However, the March 8, 2021, Amended PPP Loan Calculation Rule explained that this restriction does not apply to a default or delinquency on federal student loan debt.¹¹² Therefore, if a borrower is delinquent, or has defaulted, on a federal student loan, the borrower is still eligible for PPP. SBA says it will apply this change to any first draw or second draw PPP loan, regardless of when it was made.¹¹³

2. Illegal Activity

Anyone engaged in any activity that is illegal under federal, state, or local law is not eligible for either a first draw or second draw PPP loan.¹¹⁴ This likely means that if the activity is legal under state law, but illegal under federal law, the person is not eligible.

¹¹⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3697-3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021). General SBA rules for ineligible business, which also apply to PPP, are at 13 C.F.R. § 120.110. However, 13 C.F.R. § 120.110(a), (g), (k), and (n) do not apply to PPP. Additional information on ineligible businesses for SBA programs can be found at SBA, Lender and Development Company Programs, SOP 50 10 6, pages 141-160 (October 1, 2020), at: <https://www.sba.gov/document/sop-50-10-lender-development-company-loan-programs-0>. For ineligibility rules for PPP loans approved prior to December 27, 2020, see SBA, Lender and Development company Programs, SOP 50 10 5(k), pages 91-145 (April 1, 2019), at: <https://www.sba.gov/sites/default/files/2019-02/SOP%2050%2010%205%28K%29%20FINAL%202.15.19%20SECURED%20copy%20paste.pdf>.

¹¹¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021).

¹¹² Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,155 (March 8, 2021). Specifically, this rule does not apply to federal loans made under Parts B, D, and E of the Higher Education Act of 1965, or other programs administered by the U.S. Department of Education, including the William D. Ford Federal Direct Loan program, the Federal Family Education Loan program, the Federal Perkins Loan program, the Health Education Assistance Loan program, or the Teacher Education Assistance for College and Higher Education program.

¹¹³ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,155 (March 8, 2021).

¹¹⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021).

3. Household Employer

Anyone who is considered to be a “household employer,” meaning an individual who employs household employees such as nannies or housekeepers, is not eligible to receive a PPP loan based on those employees.¹¹⁵

4. Some Criminal Charges, Probation, Parole, or Incarceration

An owner—with a 20 percent or greater interest in a business—who is presently incarcerated or subject to indictment, criminal information, arraignment, or other means by which formal felony criminal charges are brought, is ineligible for PPP.¹¹⁶ In addition, if an owner, within the last five years, has been convicted of, pled guilty or nolo contendere to, or commenced any form of probation or parole for, a felony involving fraud, bribery, embezzlement, or a false statement on a loan application or application for federal financial assistance, the owner is ineligible.

5. Some Bankruptcy

Potential borrowers are not eligible for PPP if the borrower is involved in a bankruptcy proceeding anytime between when the PPP application is submitted and when the loan funds are disbursed.¹¹⁷ If a borrower received a first draw PPP loan disbursement, and later filed for bankruptcy, the borrower is still eligible for loan forgiveness on their first draw loan, so long as all of the forgiveness rules are met.¹¹⁸ However, if a borrower received a first draw PPP loan disbursement, and later filed for bankruptcy, the borrower likely would not be eligible for a second draw PPP loan.¹¹⁹

6. Business Has Permanently Closed

Anyone whose business has permanently closed is not eligible for a PPP loan.¹²⁰ This rule only applies to entities that have gone out of business with no intention of reopening. If a business has temporarily closed but intends to reopen that business is still eligible for a PPP loan.

7. Controlling Interest in Business by Certain Officials

If the President, Vice President, head of an Executive Department, or a member of Congress holds a controlling interest—directly or indirectly—in a potential borrower’s

¹¹⁵ First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021).

¹¹⁶ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,154, 13,155 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 12 (March 12, 2021).

¹¹⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715, 3719 (January 14, 2021). If an applicant enters bankruptcy after the PPP application has been submitted, it is the applicant’s responsibility to notify the lender and ask that the application be cancelled. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021).

¹¹⁸ SBA and Treasury Department, PPP FAQs, Question 59 (March 12, 2021).

¹¹⁹ SBA and Treasury Department, PPP FAQs, Question 60 (March 12, 2021). The borrower cannot be “presently involved” in a bankruptcy proceeding and still be eligible for PPP. If, however, the borrower resolves a bankruptcy prior to applying for a second draw PPP loan, the borrower may still be eligible for that second draw loan.

¹²⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021).

business, that borrower is not eligible for a PPP loan.¹²¹ This rule applies to the spouses of those government officials as well.

8. Business is an Issuer of Certain Securities

If a potential borrower's business is an issuer of securities that are listed on an exchange registered as a national securities exchange, that borrower is not eligible for a PPP loan.¹²²

9. Receives a Shuttered Venue Operator Grant

As a general rule, any person or entity that receives a grant for shuttered venue operators (SVOs), under the Economic Aid Act, is not eligible for a first or second draw PPP loan.¹²³ If a borrower receives a PPP loan after December 27, 2020, and then later is approved for a shuttered venue operator grant, the amount of the SVO grant will be reduced by the amount of the borrower's first draw or second draw PPP loan.¹²⁴

10. Additional Ineligibility Rules for Second Draw PPP Loans Only

In addition to the ineligibility rules described immediately above, there are several other rules that can result in a borrower being ineligible for a second draw loan.¹²⁵ The following rules do not affect the eligibility of a first draw PPP loan applicant.

a. Primarily Engaged in Political or Lobbying Activities

A business or entity that is primarily engaged in political activities or lobbying activities is not eligible for a second draw PPP loan.¹²⁶ This includes think tanks as well as entities that are engaged in advocacy for public policy or in political strategy.

b. Entities with Certain Relationships to the People's Republic of China or Hong Kong

A business entity is ineligible for a second draw PPP loan if 20 percent or more of its economic interest is owned or held—either directly or indirectly—by an entity that was either: (1) created or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong; or (2) has

¹²¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021).

¹²² Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,086, 15,088 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715, 3719 (January 14, 2021). To be ineligible for PPP under this rule, the exchange must be registered under section 6 of the Securities Exchange Act of 1934, 15 U.S.C. § 78f.

¹²³ American Rescue Plan Act § 5005 (March 11, 2021); Economic Aid Act §§ 310, 311(a) (December 27, 2020); Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,086, 15,087-15,088 (March 22, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3698 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021). Grants for shuttered venue operators are provided for under section 324 of the Economic Aid Act. See Economic Aid Act § 324 (December 27, 2020).

¹²⁴ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,086 (March 22, 2021). If a PPP loan was received before December 27, 2020, a later SVO grant will not be reduced.

¹²⁵ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718-3719 (January 14, 2021).

¹²⁶ Economic Aid Act § 311(a) (December 27, 2020); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718-3719 (January 14, 2021).

significant operations located in the People's Republic of China or the Special Administrative Region of Hong Kong.¹²⁷

A business will also be ineligible for a second draw PPP loan if it has a board member who is a resident of the People's Republic of China.¹²⁸

c. Required to Register Under the Foreign Agents Registration Act

Any borrower that is required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 is ineligible for a second draw PPP loan.¹²⁹

II. Additional Eligibility Rules for Second Draw PPP Loans Only

In addition to the general eligibility rules described above, the following eligibility rules apply only to second draw PPP loans.

A. Must Have Previously Received and Used a PPP Loan

In order to be eligible for a second draw PPP loan, a borrower must have previously received a PPP loan.¹³⁰

In addition, the borrower must use the entire amount of the first PPP loan on allowable uses *before* the expected date on which the second draw PPP loan will be disbursed.¹³¹ For purposes of this rule, the entire amount of the first PPP loan includes any loan increase that the borrower has applied for with respect to the first loan. Although the borrower must use the entirety of the loan on allowable uses, this rule will be met regardless of what percentage of the loan is used on payroll versus non-payroll expenses—all that matters is that the borrower has used, or will use, the entire first draw PPP loan on allowable uses, as defined later in this Guide.¹³²

¹²⁷ Economic Aid Act § 311(a) (December 27, 2020); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

¹²⁸ Economic Aid Act § 311(a) (December 27, 2020); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

¹²⁹ Economic Aid Act § 311(a) (December 27, 2020); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021). The Foreign Agents Registration Act can be found at 22 U.S.C. § 612.

¹³⁰ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,087 (March 22, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021).

¹³¹ Rescue Plan PPP Rule, 86 Fed. Reg. 15,083, 15,087 (March 22, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021); SBA and Treasury Department, PPP FAQs, Question 61 (March 12, 2021).

¹³² This also means that a borrower is eligible for a second draw PPP loan if they have received partial forgiveness on a first draw PPP loan, so long as the entirety of the loan was used on allowable expenses. See SBA and Treasury Department, PPP FAQs, Questions 61, 62 (March 12, 2021).

B. Employ No More Than 300 Employees

In order to be eligible for a second draw PPP loan, a borrower must not employ more than 300 employees.¹³³ There are a few exceptions to this rule.¹³⁴

C. Revenue Reduction of at Least 25 Percent

To qualify for a second draw PPP loan, a borrower must have experienced a revenue reduction of at least 25 percent in 2020, as compared to 2019.¹³⁵ For purposes of this rule, revenue reduction is usually established by looking at the borrower's gross receipts.

1. Gross Receipts Defined

In general, a borrower's revenue reduction is shown by comparing the borrower's gross receipts for 2020 with those from 2019.¹³⁶ The definition of gross receipts is consistent with the definition that SBA uses in its size regulations.¹³⁷ As explained below, the definition of gross receipts differs depending on the borrower's business type.

a. Gross Receipts for For-Profit Businesses

With for-profit businesses, gross receipts are considered total income plus the cost of goods sold. It does not include net capital gains or losses.¹³⁸ In other words, gross receipts means all revenue—in whatever form that it is received or accrued, based on the entity's accounting method—from whatever source.¹³⁹ This could include the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, which must be reduced by returns and allowances.

b. Self-Employed, Independent Contractors, and Sole Proprietors

For self-employed individuals, independent contractors, and sole proprietors, gross receipts are essentially the borrower's "gross income," plus the "cost of goods sold," but excluding net capital gains or losses.¹⁴⁰

Self-employed farmers and ranchers that are using their annual tax returns to establish the required revenue reduction should determine their gross receipts by

¹³³ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717, 3718 (January 14, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021).

¹³⁴ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021). The rules allow certain businesses that have a NAICS code beginning with 72 (including hotels and restaurants), and certain new organizations with more than one physical location, to have no more than 300 employees per location.

¹³⁵ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717-3718 (January 14, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021).

¹³⁶ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3713 (January 14, 2021).

¹³⁷ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3714 (January 14, 2021). For the definition of receipts in SBA's size regulations, see 13 C.F.R. § 121.104.

¹³⁸ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718 (January 14, 2021).

¹³⁹ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 1 (March 12, 2021).

¹⁴⁰ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718 (January 14, 2021).

comparing the sum of lines 1b and 9 from their IRS Form 1040 Schedule F for years 2019 and 2020.¹⁴¹

c. *Nonprofits, Veterans Organizations, 501(c)(6) Organizations, News Organizations, and Destination Marketing Organizations*

For nonprofits, veterans organizations, 501(c)(6) organizations, nonprofit news organizations, or destination marketing organizations, the definition of gross receipts matches the meaning found in section 6033 of the Internal Revenue Code of 1986.¹⁴² Essentially, for these organizations gross receipts will be the gross amount received by the organization during its annual accounting period from all sources and without any reductions for costs or expenses.¹⁴³ Gross receipts can therefore include the gross amount received as: (1) contributions, gifts, and grants—without reductions for the expensing of raising those funds; (2) dues or assessments from members or affiliated organizations—without reductions for any expenses required to receive the money; (3) sales or receipts from business activities; (4) the sale of assets—without reductions for the cost or other basis and expense of such sales; and (5) investment income, including interest, dividends, rents and royalties.

d. *Gross Receipts Do Not Include*

Not included in the definition of gross receipts are: (1) taxes collected for and remitted to a taxing authority, so long as they are included in gross or total income; (2) proceeds from transactions between a business concern and its domestic or foreign affiliates; and (3) amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder, or customs broker.¹⁴⁴

All other items must be included in gross receipts.¹⁴⁵ This means that subcontractor costs, reimbursements for purchases a contract makes at a customer's request, investment income, and employee-based costs like payroll taxes are included in the definition of gross receipts.

¹⁴¹ Self-employed borrowers, other than farmers and ranchers, who file a Schedule C should compare the sum of lines 4 and 7 on their IRS Form 1040 Schedule C for 2019 and 2020. For the method to be used for other eligible businesses and nonprofits, see SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 5 (March 12, 2021).

¹⁴² See IRS Code § 6033; SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 1 (March 12, 2021).

¹⁴³ SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 1 (March 12, 2021).

¹⁴⁴ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 1 (March 12, 2021).

¹⁴⁵ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 1 (March 12, 2021).

2. Demonstrating the Required Revenue Reduction

There are five different ways that a borrower of a second draw PPP loan can show the required revenue reduction.

a. In Business for the Entirety of 2019

For a borrower that was in operation for all of 2019, the borrower can compare quarterly gross receipts for any single quarter in 2020 with the gross receipts for the corresponding quarter of 2019.¹⁴⁶ As an example, if a borrower had gross receipts of 30,000 dollars during the second quarter of 2020, and gross receipts of 50,000 dollars during the second quarter of 2019, that borrower has experienced a 40 percent revenue reduction between 2019 and 2020 and is therefore eligible for a second draw PPP loan.

Alternatively, if a borrower was in business for all four quarters of 2019 and 2020, the borrower may choose to prove the required revenue reduction by comparing annual tax returns from 2019 and 2020.¹⁴⁷ To rely on this method, the borrower must submit annual tax returns from 2019 and 2020.

b. Not in Business During First and Second Quarters of 2019

For a borrower that was not in operation during the first two quarters of 2019, but was in operation for the third and fourth quarters of 2019, the borrower can compare quarterly gross receipts for any single quarter in 2020 with the gross receipts from either the third or fourth quarter of 2019.¹⁴⁸ If the borrower can show a revenue reduction of at least 25 percent when comparing the 2019 and 2020 gross receipts, the borrower will be eligible for a second draw PPP loan.

c. Not in Business During, First, Second, or Third Quarters of 2019

For a borrower that was not in operation during the first, second, or third quarters of 2019, but was in operation during the fourth quarter of 2019, the borrower can compare their quarterly gross receipts for any single quarter in 2020 with the gross receipts from the fourth quarter of 2019.¹⁴⁹ If the borrower can show a revenue reduction of at least 25 percent when comparing the 2019 and 2020 gross receipts, the borrower will be eligible for a second draw PPP loan.

¹⁴⁶ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 3 (March 12, 2021).

¹⁴⁷ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 3 (March 12, 2021).

¹⁴⁸ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 3 (March 12, 2021).

¹⁴⁹ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717-3718 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 3 (March 12, 2021).

d. Not in Business at all During 2019

For a borrower that was not in operation at all during 2019, but was in operation on February 15, 2020, the borrower can select either the second, third, or fourth quarter of 2020 and compare those gross receipts with the gross receipts from the first quarter of 2020.¹⁵⁰ If the borrower can show a revenue reduction of at least 25 percent, the borrower will be eligible for a second draw PPP loan.

¹⁵⁰ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3718 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 3 (March 12, 2021).

Chapter Three: PPP Loan Amount and Terms

PPP loans are intended to help keep workers on payroll by providing forgivable loans to small businesses. The amount of the loan is based on business payroll costs.

The following sections describe the maximum loan amounts for first draw and second draw loans, payroll costs, how PPP loan amounts are calculated, and other terms of the loans.

For self-employed farmers, the rules rely heavily on Schedule F tax forms or any equivalent.¹⁵¹ For other self-employed individuals, Schedule C tax forms are used.¹⁵²

As will be noted below, one important change following the passing of the Economic Aid Act is that loan amount calculations for farmers now take into account a farmer's *gross income* from Schedule F, instead of net profit.¹⁵³ If the farmer's gross income on line 9 of Schedule F is zero or less, the farmer is not eligible for a PPP loan.¹⁵⁴

I. Maximum PPP Loan Amounts

The maximum amount of a PPP loan differs depending on whether the borrower is applying for a first draw or second draw loan.

A. Maximum First Draw PPP Loans

For first draw PPP loans, the maximum loan amount is ten million dollars.¹⁵⁵ Loan amounts are based on payroll costs, including self-employment compensation, which are defined below.

B. Maximum Second Draw PPP Loans

For second draw PPP loans, the maximum loan amount is two million dollars.¹⁵⁶ Loan amounts are based on payroll costs, which are defined below.

¹⁵¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3,719-3720 (January 14, 2021). See also SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 3 (March 12, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 3 (March 12, 2021).

¹⁵² First Draw PPP Rule, 86 Fed. Reg. 3692, 3700-3701 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021). See also SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 1 (March 12, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 1 (March 12, 2021).

¹⁵³ Economic Aid Act § 313(a)(2) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021).

¹⁵⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021); Treasury Department, How to Calculate Maximum Loan Amounts—By Business Type, Questions 1, 3 (June 26, 2020).

¹⁵⁵ First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021).

¹⁵⁶ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

I. Payroll Costs

PPP loan amounts are based on a borrower's payroll costs, which are essentially the compensation costs for any workers whose principal place of residence is in the United States.¹⁵⁷

A. Payroll Costs Defined

The definition of payroll costs applies to both first draw PPP loans and second draw PPP loans.¹⁵⁸ For businesses that are eligible for PPP, payroll costs are defined as: (1) salaries, wages, commissions, or similar compensation;¹⁵⁹ (2) cash tips;¹⁶⁰ (3) employee benefits, such as payment for vacation, parental, family, medical or sick leave;¹⁶¹ (4) allowance for separation or dismissal; (5) payments for the provision of employee group health care or group life, disability, vision, or dental coverage, including insurance premiums;¹⁶² (6) retirement benefits; and (7) payment of state and local taxes assessed on compensation of employees.¹⁶³

To be included in eligible payroll costs for a business, employees must have their principal residence in the United States.¹⁶⁴ Further, because independent contractors can apply on their own for a PPP loan, a business cannot count any payments to an independent contractor, be it wages, commissions, income, or similar compensation when calculating the business' payroll costs.¹⁶⁵

For farmers, payroll costs are defined as gross income.¹⁶⁶

For most other independent contractors, sole proprietors, and the self-employed, payroll costs are defined as wages, commissions, income, and net profit from self-employment or

¹⁵⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3702 (January 14, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 2, 5 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 2, 5 (March 18, 2021).

¹⁵⁸ First Draw PPP Rule, 86 Fed. Reg. 3692, 3702 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

¹⁵⁹ Payroll costs also include housing stipends or allowances that are given to an employee as a part of their compensation. See SBA and Treasury Department, PPP FAQs, Question 32 (March 3, 2021).

¹⁶⁰ Cash tips can be based on employer records of past tips, if available, or on a reasonable, good-faith employer estimate of such tips. Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3702 (January 14, 2021).

¹⁶¹ Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116-127) do not count towards payroll costs for PPP. First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 8 (March 3, 2021).

¹⁶² The Economic Aid Act included employer contributions to group life, disability, vision, and dental insurance benefits as being part of eligible payroll costs. See Economic Aid Act § 308 (December 27, 2020); SBA and Treasury Department, PPP FAQs, Question 51 (March 3, 2021).

¹⁶³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3702-3703 (January 14, 2021).

¹⁶⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3700, 3702-3703 (January 14, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 2, 5 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 2, 5 (March 18, 2021).

¹⁶⁵ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 15 (March 3, 2021).

¹⁶⁶ SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 1-2 (March 12, 2021).

similar compensation.¹⁶⁷ Under recent changes to PPP, payroll costs for Schedule C filers are broadly interpreted to include either the net income or gross income of the borrower.¹⁶⁸

The amount of payroll costs that will be considered under the PPP are capped at 100,000 dollars per year for each employee.¹⁶⁹ The per year payroll is calculated on an annualized basis that is prorated for the period during which the payments are made. For the purposes of this rule, the cap applies only to cash compensation. In other words, the 100,000-dollar cap per employee does not include: (1) employer contributions to benefit or retirement plans; (2) group health care, life, disability, vision, and dental coverage and insurance premiums;¹⁷⁰ or (3) payment of state and local taxes that are assessed on employee compensation.¹⁷¹

Finally, payroll costs should be calculated on a gross basis without considering any federal taxes that are imposed or taken away.¹⁷² For example, if an employee earned \$4,000 per month in gross wages, and 500 dollars were withheld for federal taxes, the borrower would count the entire 4000 dollars as the payroll costs for that employee.¹⁷³

B. Excluded from Payroll Costs

Several costs are not included in the definition of payroll costs for purposes of PPP loans.¹⁷⁴

Federal employment taxes imposed or withheld during the applicable period are not included in PPP payroll costs.¹⁷⁵ Railroad Retirement Act taxes, as well as income taxes required to be withheld from employees are also excluded from eligible payroll costs. Finally, qualified sick and family leave wages, for which a credit is allowed under sections 7002 and 7003 of the Families First Coronavirus Response Act, are not included within the definition of payroll costs.

¹⁶⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 1-2 (March 12, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Questions 1-3 (March 12, 2021).

¹⁶⁸ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,150 (March 8, 2021).

¹⁶⁹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 7 (March 3, 2021).

¹⁷⁰ The Economic Aid Act included employer contributions to group life, disability, vision, and dental insurance benefits as being part of eligible payroll costs. See Economic Aid Act § 308 (December 27, 2020); SBA and Treasury Department, PPP FAQs, Question 51 (March 3, 2021).

¹⁷¹ SBA and Treasury Department, PPP FAQs, Question 7 (March 3, 2021).

¹⁷² SBA and Treasury Department, PPP FAQs, Question 16 (March 3, 2021).

¹⁷³ Under this rule, employer-side federal payroll taxes that are imposed on the 4000 dollars would need to be excluded from the borrower's payroll costs. See SBA and Treasury Department, PPP FAQs, Question 16 (March 3, 2021).

¹⁷⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021).

¹⁷⁵ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021). Although not defined, "the applicable period" is likely the period the borrower uses to calculate their PPP loan amount.

II. Calculating PPP Loan Amounts

The method by which PPP loan amounts are calculated differs depending on whether the borrower is applying for a first draw PPP loan or a second draw PPP loan. In addition, the calculation will differ for different types of businesses.

A. Calculating First Draw PPP Loan Amounts

The calculation of a first draw PPP loan amount differs depending on the type of borrower, when the borrower was in business, and whether or not the borrower has employees. The maximum first draw PPP loan amount is ten million dollars.¹⁷⁶

For all first draw PPP loans, borrowers—including farmers and ranchers—may choose to use calendar year 2019 or calendar year 2020 when calculating their PPP loan amount.¹⁷⁷ Borrowers who are not self-employed may also choose to use the precise one-year period before the date on which the PPP loan is made.¹⁷⁸ The maximum first draw PPP loan amount is ten million dollars.

The following sections describe some of the most common situations for farmers. Some less common possibilities are not discussed in this Guide.¹⁷⁹

1. Borrowers with Employees

In general, for borrowers with employees, a first draw PPP loan will be calculated using the following steps.¹⁸⁰ For this purpose, employees do not include independent contractors.

Step One: The borrower must first select a reference period from which to calculate payroll costs. The borrower may select: (1) calendar year 2019; (2) calendar year 2020; or (3) the precise one-year period before the date on which the first draw PPP is to be made.¹⁸¹

Step Two: Determine the borrower's total payroll costs (as defined above) from the selected reference period. The payroll costs should not include compensation paid to any employee that was in excess of \$100,000 per year.

Step Three: Calculate the borrower's average monthly payroll costs by dividing the result of Step Two by twelve.

Step Four: Multiply the result of Step Three by 2.5.

¹⁷⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021).

¹⁷⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3693 (January 14, 2021); see also SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, page 1 (March 12, 2021).

¹⁷⁸ First Draw PPP Rule, 86 Fed. Reg. 3692, 3699 (January 14, 2021).

¹⁷⁹ For example, not discussed are new entities that are self-employed but were not in operation between February 15, 2020, and June 30, 2020. See SBA, PPP How to Calculate Maximum Amounts for First Draw PPP Loans and What Documentation to Provide—By Business Type, Question 11 (March 12, 2021).

¹⁸⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3700 (January 14, 2021).

¹⁸¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3699-3700 (January 14, 2021).

Step Five: Add to the result of Step Four any outstanding amount of an Economic Injury Disaster Loan (EIDL) that was made between January 31, 2020, and April 3, 2020, and that the borrower would like to refinance. For this purpose, the outstanding balance does not include the amount of an “advance” made under the COVID-19 EIDL program, because that amount does not need to be repaid.

TOTAL: The total first draw PPP loan amount will be the result of Step Five, not to exceed ten million dollars.¹⁸²

2. Self-Employed Borrowers with No Employees Who File a Schedule F or a Schedule C

The following calculation for determining a first draw PPP loan amount applies to self-employed borrowers—including sole proprietors and independent contractors—who do not have any employees.¹⁸³ The calculation applies to self-employed borrowers who file a Schedule C. It also applies to self-employed farmers and ranchers who file a Schedule F, including those who are single member LLCs, as well as those who file as a qualified joint venture.¹⁸⁴ As is explained below, partners in partnerships have different rules.

Step One: The borrower must first select a reference period from which to determine net profit or gross income. The borrower may select either calendar year 2019 or calendar year 2020. The borrower will need to rely upon IRS Form 1040 Schedule F or Schedule C for the selected year. If selecting a 2020 Schedule F or a 2020 Schedule C, and that form has not yet been filed, the form should nonetheless be filled out and all values computed.

Step Two: The borrower must decide which value to use from the Schedule F or Schedule C. First, a farmer or rancher can select the gross income amount listed on line 9 of the selected Schedule F. Second, a Schedule C filer can choose to use the net profit amount listed on line 31 of the selected Schedule C. Alternatively, a Schedule C filer can choose to use gross income listed on line 7 of the Schedule C.¹⁸⁵ If the amount is greater than \$100,000, reduce the number to \$100,000. If the amount is zero or less, potential applicants are not eligible for a first draw PPP loan.

Step Three: Calculate the borrower’s average monthly gross income or net profit by dividing the result of Step Two by twelve.

¹⁸² For various examples of how a first draw PPP loan amount is calculated, see First Draw PPP Rule, 86 Fed. Reg. 3692, 3700 (January 14, 2021).

¹⁸³ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,151 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3700, 3701 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 1, 3 (March 12, 2021).

¹⁸⁴ Only one spouse in a qualified joint venture may submit a PPP loan application for the joint venture. For purposes of this rule, a qualified joint venture means: (1) the only members of the joint venture are a married couple who file a joint return and each file Schedule C or F with their Form 1040; (2) both spouses materially participate in the trade or business; and (3) both spouses elect not to be treated as a partnership. See SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 17 (March 12, 2021).

¹⁸⁵ For a more detailed explanation of the recent rule that allows some Schedule C filers to use their gross income, see Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,150-13,151 (March 8, 2021).

Step Four: Multiply the result of Step Three by 2.5.

Step Five: Add to the result of Step Four any outstanding amount of an Economic Injury Disaster Loan (EIDL) that was made between January 31, 2020, and April 3, 2020, and that the borrower would like to refinance. For this purpose, the outstanding balance does not include the amount of an “advance” made under the COVID-19 EIDL program, because that amount does not need to be repaid.

TOTAL: The total first draw PPP loan amount will be the result of Step Five, not to exceed ten million dollars.

3. Self-Employed Borrowers, With Employees, Who File a Schedule F or a Schedule C

The following calculation for determining a first draw PPP loan amount applies to self-employed borrowers—including sole proprietors and independent contractors—who also have employees.¹⁸⁶ The calculation applies to self-employed borrowers who file a Schedule C. It also applies to self-employed farmers and ranchers who file a Schedule F, including those who are single member LLCs, as well as those who file as a qualified joint venture.¹⁸⁷ As is explained below, partners in partnerships have different rules.

Step One: The borrower must first select a reference period from which to determine net profit or gross income. The borrower may select either calendar year 2019 or calendar year 2020. The borrower will need to rely upon IRS Form 1040 Schedule F or Schedule C for the selected year. If selecting to use a 2020 Schedule F or Schedule C, and that form has not yet been filed, the form should still be filled out and all values computed. The same selected year must be used for all calculations below.

Step Two: Determine the self-employment compensation for the borrower.

For Schedule F filers, take the difference between the gross income from Schedule F, line 9, and the sum of Schedule F lines 15, 22, and 23, up to \$100,000 per employee on an annualized basis.¹⁸⁸ This amount should be reduced to \$100,000 if greater than that, and set to zero if less than zero.

¹⁸⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3700, 3701 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 2, 3 (March 12, 2021).

¹⁸⁷ Only one spouse in a qualified joint venture may submit a PPP loan application for the joint venture. For purposes of this rule, a qualified joint venture means: (1) the only members of the joint venture are a married couple who file a joint return and each file Schedule C or F with their Form 1040; (2) both spouses materially participate in the trade or business; and (3) both spouses elect not to be treated as a partnership. See SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 17 (March 12, 2021).

¹⁸⁸ SBA says this calculation represents employee payroll costs that are subtracted from the farmer's gross income in order to avoid double-counting payroll costs. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 n. 56 (January 14, 2021).

For Schedule C filers who choose to rely on their net profit, take the net profit amount from line 31 of the selected Schedule C.¹⁸⁹ This amount should be reduced to \$100,000 if greater than that, and set to zero if less than zero.

For Schedule C filers who are relying on their gross income, take the gross income from line 7 of the selected Schedule C, and subtract the payroll costs included on lines 14, 19, and 26.¹⁹⁰ This amount should be reduced to \$100,000 if greater than that, and set to zero if less than zero.

Step Three: Determine employee payroll costs for the selected year by adding together: (1) the gross wages and tips paid to employees whose principal place of residence is in the United States, as well as any pre-tax employee contributions for health insurance or other fringe benefits excluded from Medicare wages and tips, not to exceed \$100,000 per employee on an annualized, prorated basis;¹⁹¹ and (2) any employer contributions to group health, life, disability, vision, or dental coverage,¹⁹² retirement contributions, and state or local taxes assessed on employee compensation.¹⁹³

Step Four: Calculate the average monthly payroll expenses by adding together the results of Steps Two and Three and dividing the total by twelve.

Step Five: Multiply the result of Step Four by 2.5.

Step Six: Add to the result of Step Five any outstanding amount of an Economic Injury Disaster Loan (EIDL) that was made between January 31, 2020, and April 3, 2020, and that the borrower would like to refinance. For this purpose, the outstanding balance does not include the amount of an “advance” made under the COVID-19 EIDL program, because that amount does not need to be repaid.

TOTAL: The total first draw PPP loan amount for a self-employed borrower with employees will be the result of Step Six, not to exceed ten million dollars.

¹⁸⁹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,151 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3700 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 2 (March 12, 2021).

¹⁹⁰ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,151 (March 8, 2021). For a more detailed explanation of the recent rule that allows some Schedule C filers to use their gross income, see Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,150-13,151 (March 8, 2021).

¹⁹¹ For both Schedule F and Schedule C filers, the gross wages and tips are computed using IRS Form 941 Taxable Medicare Wages & Tips (line 5c—column1) for each quarter. See Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,151-13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3700, 3701 (January 14, 2021).

¹⁹² For Schedule C filers, the value of employer group benefits will come from Schedule C, line 14. See Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); For Schedule F filers, this value will come from the applicable portions of Schedule F, line 15. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3700, 3701 (January 14, 2021).

More detailed guidance on how to compute the 2019 payroll can be found in the Federal Register. See Self-Employed PPP Interim Final Rule, 85 Fed. Reg. 21,747, 21749 (April 20, 2020).

¹⁹³ For Schedule C filers, the value of retirement contributions will come from Schedule C, line 19. See Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021). For Schedule F filers, this value will come from the applicable portions of Schedule F, line 23. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3700, 3701 (January 14, 2021).

4. Seasonal Employers

The method for determining the first draw PPP loan amount for a seasonal employer, as defined earlier in this Guide, is calculated by taking the following steps.¹⁹⁴

Step One: Determine the seasonal employer's average monthly payroll costs (as defined above) for any twelve-week period between February 15, 2019, and February 15, 2020. The seasonal employer may decide which period to use.

Step Two: Multiply the result of Step One by 2.5.

Step Three: Add to the result of Step Two any outstanding amount of an Economic Injury Disaster Loan (EIDL) that was made between January 31, 2020, and April 3, 2020, that the borrower would like to refinance. For this purpose, the outstanding balance does not include the amount of an "advance" made under the COVID-19 EIDL program, because that amount does not need to be repaid.

TOTAL: The total first draw PPP loan amount will be the result of Step Three, not to exceed ten million dollars.

5. Others—Corporations, Nonprofits, Veterans Organizations, Tribal Businesses, Partnerships, and LLC Owners

Specific rules also apply for the way first draw PPP loan amounts are calculated for corporations, nonprofits, veteran organizations and tribal businesses.¹⁹⁵ Partnerships also have a separate calculation for determining their PPP loan amount.¹⁹⁶ Farmers and ranchers who have a partnership must follow the rules specific to partnerships and cannot use their gross income from Schedule F to determine their PPP loan amount.¹⁹⁷

For LLC owners, the first draw PPP loan calculation should match the borrower's tax filing status for their selected year (2019 or 2020).¹⁹⁸ In other words, if the LLC filed as a partnership, the LLC should use the loan calculation for partnerships. Similarly, if the LLC filed as a sole proprietor or corporation, the LLC would follow the calculation method for sole proprietors or corporations.

¹⁹⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021). As defined earlier, a seasonal employer is an employer that does not operate for more than seven months in any calendar year, or which—during the preceding calendar year—had gross receipts for any six months of that year that were not more than 33.33 percent of the gross receives for the other six months of that year.

¹⁹⁵ See, for example, SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 5-7 (March 12, 2021).

¹⁹⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3702 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 4 (March 12, 2021).

¹⁹⁷ SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 17 (March 12, 2021).

¹⁹⁸ SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 8 (March 12, 2021).

B. Calculating Second Draw PPP Loan Amounts

The calculation of a second draw PPP loan amount differs depending on the type of borrower, when the borrower was in business, and whether or not the borrower has employees. The maximum second draw PPP loan amount is two million dollars.¹⁹⁹

All second draw PPP loan borrowers—including farmers and ranchers—may choose to use either calendar year 2019 or calendar year 2020 to determine their PPP loan amount.²⁰⁰ Borrowers who are not self-employed may also choose to use the precise one-year period before the date on which the PPP loan is made.

The following sections describe some of the most common situations for farmers.

1. Borrowers With Employees

In general, for borrowers with employees, a second draw PPP loan will be calculated using the following steps.²⁰¹

Step One: The borrower must first select a reference period from which to calculate payroll costs. The borrower may select: (1) calendar year 2019; (2) calendar year 2020; or (3) the precise one-year period before the date on which the second draw PPP is to be made.²⁰²

Step Two: Determine the borrower's total payroll costs (as defined above) from the selected reference period. The payroll costs should not include compensation paid to any employee that was in excess of \$100,000 per year.

Step Three: Calculate the borrower's average monthly payroll costs by dividing the result of Step Two by twelve.

Step Four: Multiply the result of Step Three by 2.5. In a few cases, the result is multiplied by 3.5.²⁰³

TOTAL: The total second draw PPP loan amount will be the result of Step Four, not to exceed two million dollars.

¹⁹⁹ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021).

²⁰⁰ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3715 (January 14, 2021).

²⁰¹ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

²⁰² Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

²⁰³ If the borrower is assigned a NAICS code beginning with 72 and is in the accommodation or food service sector, the borrower should multiple the result of Step Three by 3.5. These are accommodation and food service business. They include hotels, restaurants, and bars. See NAICS Six Digit NAICS Codes and Titles (March 17, 2021). In order to calculate the loan amount by multiplying by 3.5, the borrower must have reported a business activity code beginning with 72 on their most recent IRS Schedule C, line B. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719-3720 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 1 (March 12, 2021).

2. Self-Employed Borrowers, Without Employees, Who File Schedule F or a Schedule C

The following calculation for determining a second draw PPP loan amount applies to self-employed borrowers—including sole proprietors and independent contractors—who do not have any employees.²⁰⁴ The calculation applies to self-employed borrowers who file a Schedule C. It also applies to self-employed farmers and ranchers who file a Schedule F, including those who are single member LLCs, as well as those who file as a qualified joint venture.²⁰⁵ As is explained below, partners in partnerships have different rules.

Step One: Select either the borrower's 2019 or 2020 Schedule F or Schedule C. If using a 2020 tax form that has not yet been filed, the form must nonetheless be filled out in order to compute the applicable values.

Step Two: The borrower must decide which value to use from their Schedule F or Schedule C. First, a farmer or rancher can select the gross income amount listed on line 9 of the selected Schedule F. Second, a Schedule C filer can choose to use the net profit amount listed on line 31 of the selected Schedule C. Alternatively, a Schedule C filer can choose to use their gross income listed on line 7 of the Schedule C.²⁰⁶ If this amount is greater than \$100,000, reduce the amount to \$100,000.²⁰⁷ If the amount is zero or less, the borrower is not eligible for a second draw PPP loan.²⁰⁸

Step Three: Divide the result of Step Two by twelve.

Step Four: Multiply the result of Step Three by 2.5. Some borrowers can multiply the result by 3.5.²⁰⁹

²⁰⁴ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719-3720 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Questions 1, 3 (March 12, 2021).

²⁰⁵ Only one spouse in a qualified joint venture may submit a PPP loan application for the joint venture. For purposes of this rule, a qualified joint venture means: (1) the only members of the joint venture are a married couple who file a joint return and each file Schedule C or F with their Form 1040; (2) both spouses materially participate in the trade or business; and (3) both spouses elect not to be treated as a partnership. See SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 19 (March 12, 2021).

²⁰⁶ For a more detailed explanation of the recent rule that allows some Schedule C filers to use their gross income, see Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,150-13,151 (March 8, 2021).

²⁰⁷ See Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021).

²⁰⁸ See Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Questions 1, 3 (March 12, 2021).

²⁰⁹ If the borrower is assigned a NAICS code beginning with 72 and is in the accommodation or food service sector, the borrower should multiple the result of Step Three by 3.5. These are accommodation and food service business. They include hotels, restaurants, and bars. NAICS Six Digit NAICS Codes and Titles (March 17, 2021). In order to calculate the loan amount by multiplying by 3.5, the borrower must have reported a business activity code beginning with 72 on their most recent IRS Schedule C, line B. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 1 (March 12, 2021).

TOTAL: The total second draw PPP loan amount will be the result of Step Four. In general, rules limit the loan to two million dollars. However, a stricter rule limits the value of the loan for self-employed borrowers with no employees.²¹⁰ For most self-employed borrowers, the limit is \$20,833. For some self-employed borrowers, the limit is \$29,167. The \$29,167 limit applies to businesses with an NAICS code that begins with 72. These are accommodation and food service businesses, including hotels, restaurants, and bars.²¹¹

3. Self-Employed Borrowers, With Employees, Who File a Schedule F or a Schedule C

The following calculation for determining a second draw PPP loan amount applies to self-employed borrowers—including sole proprietors and independent contractors—who also have employees.²¹² The calculation applies to self-employed borrowers who file a Schedule C. It also applies to self-employed farmers and ranchers who file a Schedule F, including those who are single member LLCs, as well as those who file as a qualified joint venture.²¹³ As is explained below, partners in partnerships have different rules.

Step One: Select either the borrower's 2019 or 2020 Schedule F or Schedule C. If using a 2020 tax form that has not yet been filed, the form must nonetheless be filled out in order to compute the applicable values. The same selected year must be used for all calculations below.

Step Two: Determine the self-employment compensation for the borrower. For Schedule F filers, take the difference between the gross income from Schedule F, line 9, and the sum of Schedule F lines 15, 22, and 23, up to \$100,000 per employee on an annualized basis.²¹⁴ This amount should be reduced to \$100,000 if greater than that, and set to zero if less than zero.

For Schedule C filers who choose to use their net profit, take the net profit amount from line 31 of the selected Schedule C.²¹⁵ This amount should be reduced to \$100,000 if greater than that, and set to zero if less than zero.

²¹⁰ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021).

²¹¹ NAICS Six Digit NAICS Codes and Titles (March 17, 2021).

²¹² Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Questions 2, 3 (March 12, 2021).

²¹³ Only one spouse in a qualified joint venture may submit a PPP loan application for the joint venture. For purposes of this rule, a qualified joint venture means: (1) the only members of the joint venture are a married couple who file a joint return and each file Schedule C or F with their Form 1040; (2) both spouses materially participate in the trade or business; and (3) both spouses elect not to be treated as a partnership. See SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 19 (March 12, 2021).

²¹⁴ SBA says this calculation represents employee payroll costs that are subtracted from the farmer's gross income in order to avoid double-counting payroll costs. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3716, 3720 (January 14, 2021).

²¹⁵ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3716, 3720 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 2 (March 12, 2021). For a more detailed explanation of the recent rule that allows some Schedule C

For Schedule C filers who are relying on their gross income, take the gross income from line 7 of the selected Schedule C, and subtract the payroll costs included on lines 14, 19, and 26.²¹⁶ This amount should be reduced to \$100,000 if greater than that, and set to zero if less than zero.

Step Three: Determine employee payroll costs for the selected year by adding together: (1) the gross wages and tips paid to employees whose principal place of residence is in the United States, as well as any pre-tax employee contributions for health insurance or other fringe benefits excluded from Medicare wages and tips, not to exceed \$100,000 per employee on an annualized, prorated basis;²¹⁷ and (2) any employer contributions to group health, life, disability, vision, or dental coverage,²¹⁸ retirement contributions, and state or local taxes assessed on employee compensation.²¹⁹

Step Four: Calculate the average monthly payroll expenses by adding together the results of Steps Two and Three and dividing that total by twelve.

Step Five: Multiply the result of Step Four by 2.5. Some borrowers can multiply the result by 3.5.²²⁰

TOTAL: the total second draw PPP loan amount will be the result of Step Five, not to exceed two million dollars.

4. Seasonal Employers

The method for determining the loan amount for a seasonal employer, as defined earlier in this Guide, is calculated by taking the following steps.²²¹

filers to use their gross income, see Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,150-13,151 (March 8, 2021).

²¹⁶ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021).

²¹⁷ For both Schedule F and Schedule C filers, the gross wages and tips are computed using IRS Form 941 Taxable Medicare Wages & Tips (line 5c—column 1) for each quarter. See SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Questions 2, 3 (March 12, 2021).

²¹⁸ For Schedule C filers, the value of employer group benefits will come from Schedule C, line 14. For Schedule F filers, this value will come from the applicable portions of Schedule F, line 15. See SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Questions 2, 3 (March 12, 2021).

²¹⁹ For Schedule C filers, the value of retirement contributions will come from Schedule C, line 19. For Schedule F filers, this value will come from the applicable portions of Schedule F, line 23. See SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Questions 2, 3 (March 12, 2021).

²²⁰ If the borrower is assigned a NAICS code beginning with 72 and is in the accommodation or food service sector, the borrower should multiple the result of Step Four by 3.5. These are accommodation and food service business. They include hotels, restaurants, and bars. NAICS Six Digit NAICS Codes and Titles (March 17, 2021). In order to calculate the loan amount by multiplying by 3.5, the borrower must have reported a business activity code beginning with 72 on their most recent IRS Schedule C, line B. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021).

²²¹ As defined earlier, a seasonal employer is an employer that does not operate for more than seven months in any calendar year, or which—during the preceding calendar year—had gross receipts for any six months of that year that were not more than 33.33 percent of the gross receives for the other six months of that year. Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

Step One: Determine the seasonal employer's payroll costs (as defined above) for any twelve-week period between February 15, 2019, and February 15, 2020. The seasonal employer may decide which period to use.

Step Two: Calculate the average monthly payroll amount by taking the result of Step One and dividing it by twelve.

Step Three: Multiply the result of Step Two by 2.5. Some borrowers can multiply the result by 3.5.²²²

TOTAL: Total second draw PPP loan amount will be the result of Step Three, not to exceed two million dollars.

5. New Entities: Corporations and Nonprofits with Employees, but Not in Operation Between February 15, 2019 and February 15, 2020

For new corporate or nonprofit entities, meaning borrowers that were not in operation for the full one-year period preceding February 15, 2020, and which have employees, a second draw PPP loan amount will be calculated as follows.²²³

Step One: Compute the borrower's total payroll costs from when the entity first began operating in 2019 or 2020, through the end of calendar year 2020. For this purpose, the payroll costs should include: (1) the gross wages and tips paid to employees whose principal place of residence is in the United States, as well as any pre-tax employee contributions for health insurance or other fringe benefits;²²⁴ (2) any employer contributions to group health, life, disability, vision, or dental coverage; (3) retirement contributions; and (4) state or local taxes assessed on employee compensation.

Step Two: Divide the result of Step One by the number of months during which the payroll costs in Step One were incurred, in order to determine the borrower's average monthly payroll costs.

Step Three: Multiply the result of Step Two by 2.5. Some borrowers can multiply the result by 3.5.²²⁵

²²² If the borrower is assigned a NAICS code beginning with 72 and is in the accommodation or food service sector, the borrower should multiply the result of Step Two by 3.5. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3716, 3720 (January 14, 2021). These are accommodation and food service business. They include hotels, restaurants, and bars. NAICS Six Digit NAICS Codes and Titles (March 17, 2021).

²²³ SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 10 (March 12, 2021). The Federal Register also provides a method for calculating a loan for new entities, but it provides fewer details. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

²²⁴ The gross wages and tips can be computed using IRS Form 941 Taxable Medicare Wages & Tips (line 5c—column 1) for each quarter the business was in operation. See SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 10 (March 12, 2021).

²²⁵ If the borrower is assigned a NAICS code beginning with 72 and is in the accommodation or food service sector, the borrower should multiply the result of Step Two by 3.5. These are accommodation and food service business. They include hotels, restaurants, and bars. NAICS Six Digit NAICS Codes

TOTAL: The total second draw PPP loan amount will be the result of Step Three, not to exceed two million dollars.

6. New Entities: Self-Employed Borrowers With Employees, but Not in Operation Between February 15, 2019, and February 15, 2020

For self-employed borrowers with employees that are new entities—meaning entities they were not in operation for the full one-year period preceding February 15, 2020—a second draw PPP loan amount will be calculated as follows.²²⁶

Step One: Determine the borrower's applicable owner compensation for the months it was in operation from 2019 through the end of 2020. This requires looking at the relevant IRS tax forms for 2019 and 2020.

For self-employed Schedule F filers with employees, this is the difference between the gross income from Schedule F, line 9, and the sum of Schedule F lines 15, 22, and 23. If this amount is less than zero, set the amount to zero.

For self-employed Schedule C filers, this is the value of net profit from Schedule C, line 31. If this amount is less than zero, set the amount to zero.

Step Two: Multiple \$8,333 by the number of months that the borrower was in operation during 2019 through the end of calendar year 2020.

Step Three: Select the lesser of the result of Step One and the result of Step Two.

Step Four: Compute the borrower's total payroll costs from when the entity first began operating in 2019 or 2020, through the end of calendar year 2020. For this purpose, the payroll costs should include: (1) the gross wages and tips paid to employees whose principal place of residence is in the United States, as well as any pre-tax employee contributions for health insurance or other fringe benefits;²²⁷ (2) any employer contributions to group health, life, disability, vision, or dental coverage; (3) retirement contributions; and (4) state or local taxes assessed on employee compensation.

Step Five: Add together the result of Step Three and Step Four

Step Six: Multiply the result of Step Five by 2.5. Some borrowers can multiply the result by 3.5.²²⁸

and Titles (March 17, 2021). In order to calculate the loan amount by multiplying by 3.5, the borrower must have reported a business activity code beginning with 72 on their most recent IRS Schedule C, line B. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021).

²²⁶ SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 11 (March 12, 2021).

²²⁷ The gross wages and tips can be computed using IRS Form 941 Taxable Medicare Wages & Tips (line 5c—column1) for each quarter the business was in operation. See SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 11 (March 12, 2021).

²²⁸ If the borrower is assigned a NAICS code beginning with 72 and is in the accommodation or food service sector, the borrower should multiply the result of Step Five by 3.5. These are accommodation

TOTAL: The total second draw PPP loan amount will be the result of Step Six, not to exceed two million dollars.

7. **New Entities: Self-Employed Borrowers Without Employees, but Not in Operation Between February 15, 2019 and February 15, 2020**

For self-employed borrowers without employees that are new entities—meaning entities they were not in operation for the full one-year period preceding February 15, 2020—a second draw PPP loan amount will be calculated as follows.²²⁹

Step One: Determine the borrower's applicable owner compensation for the months it was in operation from 2019 through the end of 2020. This requires looking at the relevant IRS tax forms for 2019 and 2020, either Schedule F or Schedule C.

For self-employed Schedule F filers, this is the value of gross income from Schedule F, line 9. If this amount is less than zero, set the amount to zero.

For self-employed Schedule C filers, this is the value of net profit from Schedule C, line 31. If this amount is less than zero, set the amount to zero.

Step Two: Multiple \$8,333 by the number of months that the borrower was in operation during 2019 through the end of calendar year 2020.

Step Three: Select the lesser of the result of Step One and the result of Step Two, and multiply that number by 2.5. Some borrowers can multiply the result by 3.5.²³⁰

TOTAL: The total second draw PPP loan amount will be the result of Step Three, not to exceed two million dollars.

8. **Others—Corporations, Nonprofits, Veterans Organizations, Tribal Businesses, Partnerships, and LLCs**

Specific rules apply for the way second draw PPP loan amounts are calculated for corporations, nonprofits, veterans organizations and tribal businesses.²³¹ Partnerships

and food service business. They include hotels, restaurants, and bars. NAICS Six Digit NAICS Codes and Titles (March 17, 2021). In order to calculate the loan amount by multiplying by 3.5, the borrower must have reported a business activity code beginning with 72 on their most recent IRS Schedule C, line B. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021).

²²⁹ SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 11 (March 12, 2021).

²³⁰ If the borrower is assigned a NAICS code beginning with 72 and is in the accommodation or food service sector, the borrower should multiple that number by 3.5. These are accommodation and food service business. They include hotels, restaurants, and bars. NAICS Six Digit NAICS Codes and Titles (March 17, 2021). In order to calculate the loan amount by multiplying by 3.5, the borrower must have reported a business activity code beginning with 72 on their most recent IRS Schedule C, line B. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021).

²³¹ See, for example, SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts Questions 5-7 (March 12, 2021).

also have a separate calculation for determining their PPP loan amount.²³² Farmers and ranchers who have a partnership must follow the rules specific to partnerships and cannot use their gross income from Schedule F to determine their PPP loan amount.²³³

For LLC owners, the second draw PPP loan calculation should match the borrower's tax filing status for their selected year (2019 or 2020).²³⁴ In other words, if the LLC filed as a partnership, the LLC should use the loan calculation method for partnerships. Similarly, if the LLC filed as a sole proprietor or corporation, the LLC would follow the calculation method for sole proprietors or corporations.

III. Cost of the PPP

The cost of PPP loans is covered by the federal government.²³⁵ Lenders receive substantial payment from the federal government for making the loans.

IV. Additional Terms of PPP Loans

The following sections outline the additional terms for first draw and second draw PPP loans.

A. Only One First Draw and One Second Draw PPP Loan Per Borrower, with an Exception for First Draw Loan Increases

No eligible borrower may receive more than one first draw PPP loan.²³⁶ A borrower may also receive only one second draw PPP loan. Any borrower who received a PPP loan in 2020 is considered to have received a first draw loan and may therefore only be eligible now for a second draw loan. For this reason, the PPP rules recommend that borrowers consider applying for the maximum loan amount.²³⁷

As described later in this Guide, some borrowers who received a PPP loan in 2020 may be eligible to reapply for an increase in that previous loan amount.²³⁸

²³² Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 4 (March 12, 2021).

²³³ SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 19 (March 12, 2021).

²³⁴ SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Question 8 (March 12, 2021).

²³⁵ SBA Procedural Notice, Second Updated Paycheck Protection Program Lender Processing Fee Payment and 1502 Reporting Process, Control No. 5000-20091 (February 8, 2021), at: <https://www.sba.gov/document/procedural-notice-5000-20091-second-updated-paycheck-protection-program-lender-processing-fee-payment-1502-reporting-process>.

²³⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

²³⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021).

²³⁸ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021).

B. No Personal Guarantees or Collateral Required

No personal guarantees are required, and no collateral is required.²³⁹ There are also no upfront guarantee fees payable by the borrower.²⁴⁰

C. Agent Fees Possible

If a borrower knowingly retains an agent to help with the PPP process, any associated fees must be paid by the borrower.²⁴¹ Agent fees cannot be paid out of the proceeds of a PPP loan. A lender will be responsible for paying an agent's fees only if that lender directly contracts with the agent.²⁴²

D. Repayment Period Now Five Years

Since the passing of the Flexibility Act on June 5, 2020, PPP loans are due in five years.²⁴³ The Economic Aid Act did not change this rule, and therefore both first draw and second draw PPP loans made in 2021 are due in five years if not forgiven.²⁴⁴ The repayment period will be described in the loan agreement.

E. Ten-Month Deferral Period

Payments on first draw and second draw PPP loans, including interest payments, are deferred for the ten months immediately following the end of the borrower's loan forgiveness covered period.²⁴⁵ The loan forgiveness covered period is defined later in this Guide.

If a borrower does not submit a loan forgiveness application to the lender within that ten-month period, the borrower will be required to begin making loan payments—on both principal and interest—immediately following the end of the deferral period.²⁴⁶ For example, if a borrower's PPP loan was disbursed on January 25, 2021, and the borrower's loan forgiveness covered period ends on July 12, 2021, the borrower must submit a loan

²³⁹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3709 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021).

²⁴⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3709 (January 14, 2021).

²⁴¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3709 (January 14, 2021). This is a change made by the Economic Aid Act, and it is a departure from the prior rule under the CARES Act, which provided that agents must charge lenders, and not borrowers, for their fees. See Economic Aid Act § 340(b) (December 27, 2020).

²⁴² PPP rules limit the amount of fees an agent may charge a lender. For details on allowable agent fees, see First Draw PPP Rule, 86 Fed. Reg. 3692, 3709 (January 14, 2021).

²⁴³ Flexibility Act, § 2(a) (June 5, 2020). For borrowers who received PPP loans prior to June 5, 2020, the loans are due in two years if not forgiven. For two-year loans the borrower and the lender can agree to extend the loan term to five years. First Official PPP Interim Final Rule, 85 Fed. Reg. 20,811, 20813 (April 15, 2020); Initial PPP Interim Final Rule, at 12 (April 2, 2020); SBA and Treasury Department, PPP FAQs, Question 49 (March 3, 2021).

²⁴⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 49 (March 3, 2021).

²⁴⁵ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703-3704 (January 14, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021); SBA and Treasury Department, PPP FAQs, Question 52 (March 3, 2021).

²⁴⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703-3704 (January 14, 2021).

forgiveness application to the lender by May 12, 2022. If not, the borrower will need to begin making payments on the loan on or after May 12, 2022.

Importantly, interest accrues on every PPP loan from the date of disbursement.²⁴⁷

F. Interest Rate is 1 Percent

The interest rate for a borrower on a first draw or second draw PPP loan that is not forgiven is 1 percent.²⁴⁸ The interest is calculated on a non-compounding, non-adjustable basis.²⁴⁹ The one percent interest will accrue during the deferral period, even though the borrower does not have to pay anything during that period.²⁵⁰ The accrued interest and the principal are both eligible for forgiveness.²⁵¹

V. Allowable Uses of PPP Loan Funds

PPP loans must be used for specific, allowable purposes. This is true even if the loan is eventually forgiven. SBA says it will seek repayment of funds used in an unauthorized way.²⁵² If done knowingly, there could be additional liability and criminal charges.²⁵³

On both the first draw and second draw PPP application forms, borrowers must certify that the current economic uncertainty makes the loan necessary to support ongoing operations.²⁵⁴ In addition, the applications require that borrowers certify that the loan proceeds will be used for specific purposes, including to retain workers, maintain payroll, and make payments for mortgage, rent, and utilities. Following the passing of the Economic Aid Act, the applications also allow PPP loans to be used for payments of covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures.²⁵⁵ The following sections explain the allowable uses of PPP loans in more detail. Except where noted otherwise, these rules apply to both first draw and second draw PPP loans.²⁵⁶ In some cases, the rules are slightly different for self-employed borrowers, but those differences are explained below.

²⁴⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021).

²⁴⁸ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021).

²⁴⁹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703, 3709 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021).

²⁵⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021).

²⁵¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021).

²⁵² First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021).

²⁵³ First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 3 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021).

²⁵⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021); PPP Borrower Application Form Revised, SBA Form 2483, at 3 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021). See also SBA and Treasury Department, PPP FAQs, Questions 31, 43, 46 (March 3, 2021).

²⁵⁵ Economic Aid Act § 304(a) (December 27, 2020).

²⁵⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021).

Most—though not all—of the allowable uses of a PPP loan are also forgivable uses of a PPP loan. The rules for PPP loan forgiveness, including what uses of the proceeds are forgivable, are described later in this Guide.

A. Employee Payroll Costs and Owner Compensation Replacement

PPP loan funds, for both first draw and second draw loans, can be used to cover payroll costs, or similar compensation.²⁵⁷ For self-employed borrowers, PPP loans can be used for what SBA calls “owner compensation replacement.”²⁵⁸

1. Payroll Costs for Borrowers with Employees

For borrowers with employees—including self-employed borrowers who have employees—payroll costs are an allowable use of PPP loan funds, so long as the costs are for employees whose principal place of residence is in the United States.²⁵⁹ Payroll costs, which are defined more fully above, can include salaries, commissions, or similar compensation, as well as cash tips or the equivalent.²⁶⁰

2. Owner Compensation Replacement for Self-Employed Borrowers

For those self-employed individuals with a 2019 or 2020 IRS Form 1040 Schedule C or Schedule F, PPP loan funds are to be used for what SBA sometimes calls “owner compensation replacement.”²⁶¹ The owner compensation replacement is based on either: (1) the borrower’s 2019 or 2020 gross income, as reported on line 9 of Schedule F; (2) the borrower’s 2019 or 2020 net profit, as reported on line 31 of Schedule C; or (3) the borrower’s 2019 or 2020 gross income, as reported on line 7 of the Schedule C.²⁶² The year that is used must be the same year that the borrower used when calculating their PPP loan amount.

B. Group Health Care, Life, Disability, Vision, or Dental Benefits and Premiums

Costs related to the continuation of employee group health care, life, disability, vision, and dental benefits during periods of paid sick, medical, or family leave are allowable uses of PPP funds.²⁶³ In addition, the cost of insurance premiums for employee group health care, life, disability, vision, and dental coverage are also allowable uses.

²⁵⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3702, 3704 (January 14, 2021).

²⁵⁸ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152, 13,153 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁵⁹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704-3705 (January 14, 2021).

²⁶⁰ For a complete definition of payroll costs, see First Draw PPP Rule, 86 Fed. Reg. 3692, 3702-3703 (January 14, 2021). The definition of payroll costs described in the First Draw PPP Rule also applies to second draw PPP loans. See Second Draw PPP Rule, 86 Fed. Reg. 3712, 3719 (January 14, 2021).

²⁶¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁶² Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3701, 3704 (January 14, 2021).

²⁶³ First Draw PPP Rule, 86 Fed. Reg. 3692, 3604 (January 14, 2021).

C. Mortgage Interest Payments

The payment of interest on a mortgage obligation is an allowable use of a PPP loan.²⁶⁴ This does not include any prepayment or payment of principal. Only payments of interest on business mortgage obligations are allowable uses of PPP loan funds.²⁶⁵ Interest on non-business mortgages is not allowed.

For self-employed borrowers, allowable business mortgage interest payments are only those for which the borrower has claimed—or is entitled to claim—a deduction on their 2019 or 2020 Schedule C (or, likely, Schedule F).²⁶⁶ The applicable year is whichever year the borrower used when calculating the PPP loan amount. For self-employed borrowers, such payments could include, for example, the interest on a loan for a vehicle the borrower uses to perform their business, or the interest on a mortgage for a warehouse that was purchased to store business equipment.

D. Rent or Lease Payments

The payment of rent or lease obligations are an allowable use of PPP loan funds.²⁶⁷ Only rent or lease payments on *business* property are allowable uses of PPP loan funds.²⁶⁸

For self-employed borrowers, allowable business rent or lease payments are only those for which the borrower has claimed—or is entitled to claim—a deduction on their 2019 or 2020 Schedule C (or, likely, Schedule F).²⁶⁹ The applicable year is whichever year the borrower used when calculating the PPP loan amount. For self-employed borrowers, these payments could include rent for a warehouse or a business vehicle.

E. Utility Payments

Utility payments are an allowable use of PPP loan funds.²⁷⁰ Only payments for business utility expenses are allowable uses of PPP loan funds.²⁷¹ Utilities likely means electricity,

²⁶⁴ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704, 3,706 (January 14, 2021).

²⁶⁵ The applications for both first draw and second draw PPP loans require that borrowers certify that the loan proceeds will only be used for “business-related purposes.” See PPP Borrower Application Form Revised, SBA Form 2483, at 3 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021).

²⁶⁶ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021).

²⁶⁷ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁶⁸ The applications for both first draw and second draw PPP loans require that borrowers certify that the loan proceeds will only be used for “business-related purposes.” PPP Borrower Application Form Revised, SBA Form 2483, at 3 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021).

²⁶⁹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021).

²⁷⁰ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁷¹ The applications for both first draw and second draw PPP loans require that borrowers certify that the loan proceeds will only be used for “business-related purposes.” See PPP Borrower Application Form Revised, SBA Form 2483, at 3 (March 18, 2021); PPP Second Draw Borrower Application Form, SBA Form 2483-SD, at 3 (March 18, 2021).

gas, water, transportation, telephone, and internet services that were in service before February 15, 2020.

For self-employed borrowers, allowable business utility payments are only those for which the borrower has claimed—or is entitled to claim—a deduction on their 2019 or 2020 Schedule C (or, likely, Schedule F).²⁷² The applicable year is whichever year the borrower used when calculating the PPP loan amount. For self-employed borrowers, such payments could include the cost of electricity for a warehouse the borrower rents or gas used while driving a business vehicle.

F. Interest on Certain Debts

Interest payments on any debts that were incurred before February 15, 2020, are allowed uses of PPP loan funds.²⁷³ However, such interest payments are not eligible for PPP loan forgiveness.

G. Refinancing an SBA EIDL Loan Made Between January 31, 2020, and April 3, 2020—First Draw PPP Loans Only

For first draw PPP loans only, borrowers may use PPP loan funds to refinance an SBA EIDL loan that was made between January 31, 2020, and April 3, 2020.²⁷⁴ Only an EIDL loan—not any Emergency Advance received under the program—may be refinanced.

H. Covered Operations Expenditures

Covered operations expenditures are an allowable use of PPP loans.²⁷⁵ These include payments for any business software or cloud computing service that facilitates: (1) business operations; (2) product or service delivery; (3) the processing, payment, or tracking of payroll expenses; (4) human resources, sales and billing functions; or (5) the accounting or tracking of supplies, inventory, records and expenses.

For self-employed borrowers, allowable covered operations expenditures are only those that are deductible on Form 1040 Schedule C—and likely Schedule F.²⁷⁶

Although covered operations expenditures became an allowable use of PPP loans following the passing of the Economic Aid Act, these expenditures are allowed as if they were

²⁷² Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021).

²⁷³ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704-3705 (January 14, 2021).

²⁷⁴ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704-3705 (January 14, 2021). Rules related to the refinancing of EIDL loans do not apply to second draw PPP loans. Second Draw PPP Rule, 86 Fed. Reg. 3712, 3,716 (January 14, 2021).

²⁷⁵ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁷⁶ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021).

included from the beginning.²⁷⁷ In other words, these are allowable uses of a PPP loan no matter when the loan was made.

I. Covered Property Damage Costs

Covered property damage costs are an allowable use of PPP loans.²⁷⁸ These are defined as costs that are related to property damage and vandalism or looting arising from public disturbances that occurred during 2020 and which were not covered by insurance or other compensation.

For self-employed borrowers, allowable covered property damage costs are only those that are deductible on Form 1040 Schedule C—and likely Schedule F.²⁷⁹

Although covered property damage costs became an allowable use of PPP loans following the passing of the Economic Aid Act, these expenditures are allowed as if they were included from the beginning of the program.²⁸⁰ In other words, these are allowable uses of a PPP loan no matter when the loan was made.

J. Covered Supplier Costs

Covered supplier costs are an allowable use of PPP loans.²⁸¹ These are expenditures made by a borrower to a supplier of certain types of goods. Specifically, the goods must be those that are both essential to the borrower's operations at the time the expenditure is made, and for which there is a contract, order, or purchase order. To qualify as an eligible use, the contract, order, or purchase order must have been in effect before the start of the borrower's covered period. For perishable goods, must be in effect either before or any time during the covered period.

For self-employed borrowers, allowable covered supplier costs are only those that are deductible on Form 1040 Schedule C—and likely Schedule F.²⁸²

Although covered supplier costs became an allowable use of PPP loans following the passing of the Economic Aid Act, these expenditures are allowed as if they were included from the beginning.²⁸³ In other words, these are allowable uses of a PPP loan no matter when the loan was made.

²⁷⁷ Economic Aid Act § 304(a)-(b) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁷⁸ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁷⁹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021).

²⁸⁰ Economic Aid Act § 304(a)-(b) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁸¹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁸² Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021).

²⁸³ Economic Aid Act § 304(a)-(b) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

K. Covered Worker Protection Expenditures

Covered worker protection expenditures are an allowable use of PPP loans.²⁸⁴ These expenditures include operating and capital expenditures that aid a business in adapting to COVID-19-related requirements or guidance for sanitation, social distancing, worker safety, or customer safety that are issued by various federal, state, and local agencies.²⁸⁵ To qualify as eligible uses of PPP loan funds, these expenditures must have occurring between March 1, 2020, and whenever the national emergency related to COVID-19 ends.

The rules provide various examples of allowed covered worker protection expenditures.²⁸⁶

For self-employed borrowers, allowable covered worker protection expenditures are only those that are deductible on Form 1040 Schedule C—and likely Schedule F.²⁸⁷

Although covered worker protection expenditures became an allowable use of PPP loans following the passing of the Economic Aid Act, these expenditures are allowed as if they were included in the original rules for the program.²⁸⁸ In other words, these are allowable uses of a PPP loan no matter when the loan was made.

VI. Uses Not Allowed—Lobbying

The Economic Aid Act included a new rule that PPP loan funds cannot be used for lobbying activities or expenditures.²⁸⁹

²⁸⁴ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁸⁵ The requirements or guidance should come from the Department of Health and Human Services (HHS), the Centers for Disease Control (CDC), the Occupational Safety and Health Administration (OSHA), or any state or local government. First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

²⁸⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021). These include the purchase, maintenance or renovation of assets that create or expand and of the following: (1) a drive-through window facility; (2) an indoor, outdoor, or combined air or air pressure ventilation or filtration system; (3) a physical barrier such as a sneeze guard; (4) an expansion of additional indoor, outdoor, or combined business space; (5) an onsite or offsite health screening capability; or (6) other assets related to compliance with COVID-19 requirements or guidance. Covered worker protection expenditures can also include the purchase of: (1) certain covered materials, such as PPE surgical masks, PPE nitrile gloves; level 3 and 4 surgical gowns, and syringes and hypodermic needles (2) particulate filtering facepiece respirators approved by OSHA; and (3) other kinds of personal protective equipment, as determined by the Secretary of HHS and Secretary of Labor. For a full list of the covered materials, see 44 C.F.R. § 328.103(a) (2021).

²⁸⁷ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,152 (March 8, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021).

²⁸⁸ Economic Aid Act § 304(a)-(b) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3,702, 3704 (January 14, 2021).

²⁸⁹ Economic Aid Act § 319 (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 58 (March 3, 2021). For purposes of this rule, lobbying activities are defined in section 3 of the Lobby Disclosure Act of 1995. Under section 3 of the Lobbying Disclosure Act of 1995, the term “lobbying activities” means “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.” See 2 U.S.C. § 1602(7). The prohibition against using PPP funds for lobbying expenditures includes expenditures related to a

Chapter Four: PPP Loan Application and Documentation Requirements

The following sections describe the application process for first draw and second draw PPP loans and the documentation requirements that apply for each loan.

I. PPP Applications

The applications for both the first draw and second draw PPP loans are available online.²⁹⁰ Borrowers must apply for PPP loans through banks and other lenders who make loans to small businesses, including Farm Credit System institutions.²⁹¹ Some non-bank lenders, including community development financial institutions, are also eligible to make PPP loans.²⁹² The loans are then guaranteed by the federal government.²⁹³ Lenders approved to make first draw PPP loans may also make second draw PPP loans.²⁹⁴

The rules and process for applying for a recalculation or increase of a previously-received PPP loan are discussed later in this Guide. The following applications should not be used to apply for a loan increase on an existing PPP loan.

A. First Draw PPP Loan Applications

Borrowers should apply for a first draw PPP loan if they have not previously received a PPP loan.²⁹⁵ Applications for first draw PPP loans can be found online.²⁹⁶ There are two primary applications for first draw loans—one is for borrowers who file IRS Form Schedule C and would like to use their gross income to calculate their PPP loan amount, and the other application form is the standard form for all other borrowers. It is also possible that

State or local election, or any expenditures designed to influence legislation, appropriations, regulation, administrative action, or any Executive order that is either proposed or pending before Congress or any state governing body.

²⁹⁰ SBA website, at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

²⁹¹ Lenders can be existing SBA lenders, federally insured depository institutions, federally insured credit unions, and Farm Credit System institutions. Some depository and non-depository financing providers are also eligible lenders, if they originate, maintain, and service business loans or other commercial financial receivables and have been operating since at least February 15, 2019 and have serviced more than fifty million dollars in business loans or other financial receivables during a consecutive twelve-month period in the last thirty-six months. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3707 (January 14, 2021).

²⁹² In order for a non-bank lender to be approved to make PPP loans, they must be either: (1) a community development financial institution (other than a federally insured bank or federally insured credit union); or (2) a majority minority-, women-, or veteran/military-owned lender. The lender must also have originated, maintained, or serviced more than ten million dollars in business loans or other commercial financial receivables during a twelve-month period in the past thirty-six months. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3707 (January 14, 2021). To find lenders that are eligible to make PPP loans, visit: <https://www.sba.gov/paycheckprotection/find>.

²⁹³ First Draw PPP Rule, 86 Fed. Reg. 3692, 3694, 3709 (January 14, 2021).

²⁹⁴ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3716 (January 14, 2021).

²⁹⁵ See, for example, First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021).

²⁹⁶ See SBA website, at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>. A PDF of the First Draw PPP application (SBA Form 2483) can be downloaded at: <https://www.sba.gov/document/sba-form-2483-ppp-first-draw-borrower-application-form>.

the borrower's lender will have different, but equivalent forms, that the borrower can use to apply for a first draw PPP loan.²⁹⁷

1. Standard Application—SBA Form 2483

The standard application for first draw loans is SBA Form 2483.²⁹⁸

2. Application for Some Schedule C Filers—SBA Form 2483-C

The first draw PPP loan application for Schedule C filers that use their gross income to calculate their PPP loan (as opposed to using net profit) is SBA Form 2483-C.²⁹⁹

B. Second Draw PPP Loan Application—SBA Form 2483-SD

Borrowers should only apply for a second draw PPP loan if they have previously received a PPP loan. In general, a borrower is only eligible to receive a second draw PPP loan if the borrower has—or will—use the full amount of the first PPP loan on or before the expected date of disbursement of the second draw PPP loan.³⁰⁰ For purposes of this rule, the “full amount” of the first PPP loan includes any increase in loan amount the borrower may have received following the passing of the Economic Aid Act. In addition, to qualify for a second draw loan, the entire amount of the first loan must have been used on allowable uses of PPP loans. Allowable uses of PPP loans are described earlier in this Guide.

There are two primary applications for second draw PPP loans—one is for borrowers who file IRS form Schedule C and would like to use their gross income to calculate their PPP loan amount, and the other application form is the standard form for all other borrowers. Applications for second draw PPP loans can be found online.³⁰¹ It is also possible that the borrower's lender will have different, but equivalent forms, that the borrower can use to apply for a second draw PPP loan.³⁰²

1. Standard Application—SBA Form 2483-SD

The standard application for second draw loans is SBA Form 2483-SD.³⁰³

²⁹⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 13 (March 3, 2021).

²⁹⁸ A PDF of the First Draw PPP application (SBA Form 2483) can be downloaded at:

<https://www.sba.gov/document/sba-form-2483-ppp-first-draw-borrower-application-form>.

²⁹⁹ A PDF of the First Draw PPP application for Schedule C filers using gross income (SBA Form 2483-C) can be downloaded at: <https://www.sba.gov/sites/default/files/2021-03/Borrower%20Application%202483-C-508.pdf>.

³⁰⁰ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3713 (January 14, 2021).

³⁰¹ See SBA website, at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

³⁰² Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 13 (March 3, 2021).

³⁰³ A PDF of the Second Draw PPP application (SBA Form 2483-SD) can be downloaded at: <https://www.sba.gov/document/sba-form-2483-sd-ppp-second-draw-borrower-application-form>.

2. Application for Some Schedule C Filers—SBA Form 2483-SD-C

The second draw PPP loan application for Schedule C filers that use their gross income to calculate their PPP loan (as opposed to using net profit) is SBA Form 2483-SD-C.³⁰⁴

II. Documenting PPP Eligibility, Including for Self-Employed

In general, PPP borrowers must provide documentation to establish their PPP eligibility. This includes providing documents such as payroll processor records, payroll tax filings, Form 1099-MISC forms, Schedule C or Schedule F, or income and expense sheets from sole proprietors.³⁰⁵ If no such documents are available, the borrower must provide other supporting documentation, such as quarterly financial statements or bank records, that demonstrate the qualifying payroll amount.³⁰⁶

The documentation requirements for first draw and second draw PPP loans are described below. In most respects, the documentation requirements are very similar, but slight differences do exist and those are noted below.

A. Documentation Required for First Draw PPP Loans

The following sections outline the documentation that borrowers must submit with their first draw PPP loan application.

1. Documentation for Borrowers with Employees

When applying for a first draw PPP loan, borrowers who have employees—including self-employed borrowers with employees—must provide IRS Form 941, the Employer's Quarterly Federal Tax Return, or other tax forms that contain similar information.³⁰⁷ Agricultural employers that file an annual IRS Form 943, or very small businesses that file an annual IRS Form 944, should provide those forms in place of Form 941.³⁰⁸

Borrowers must also provide state quarterly wage unemployment insurance tax reporting forms from each quarter in either 2019 or 2020, depending on which year the borrower used to calculate the PPP loan amount.³⁰⁹ Similar payroll processor records may also be accepted. Evidence of any group retirement or health insurance contributions must also be provided. Finally, borrowers must establish that they were in operation on February 15, 2020, by submitting a payroll statement or similar documentation from the pay period that covered February 15, 2020.

³⁰⁴ A PDF of the Second Draw PPP application for Schedule C filers using gross income (SBA Form 2483-SD-C) can be downloaded at: <https://www.sba.gov/document/sba-form-2483-c-ppp-first-draw-borrower-application-form-schedule-c-filers-using-gross-income>.

³⁰⁵ First Draw PPP Rule, 86 Fed. Reg. 3692, 3695, 3708 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3,716, 3720 (January 14, 2021).

³⁰⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3708 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3,716 (January 14, 2021).

³⁰⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3700-3701 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 2, 5, 7 (March 12, 2021).

³⁰⁸ SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 9 (March 12, 2021).

³⁰⁹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3700-3701 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 2, 5, 7 (March 12, 2021).

2. Documentation for Self-Employed Schedule C Filers

PPP documentation rules for the self-employed rely heavily on IRS Form 1040 Schedule C.³¹⁰ Schedule C is commonly used for tax purposes by self-employed people. In order to support a first draw PPP loan application, a self-employed borrower must provide either their 2019 or 2020 Schedule C—whichever is used to calculate the PPP loan amount—along with documentation demonstrating that the borrower is self-employed, such as a 2019 IRS Form 1099-MISC, invoices, bank statements, or books of record. Additionally, in order to establish that the individual was in operation on February 15, 2020, a payroll statement, bank statement, book of record, or similar documentation from that pay period must be submitted.

As described above, self-employed individuals with employees must also provide Form 941, or other tax forms showing payroll processor records, in addition to evidence of any group retirement and health insurance contributions, as applicable.³¹¹

3. Documentation for Self-Employed Farmers Who File Schedule F

Self-employed farmers do not typically file a Schedule C, but instead file a Schedule F. Farmers that file a Schedule F and are applying for a first draw PPP loan must provide their 2019 or 2020 IRS Form 1040 Schedule 1 and Schedule F—whichever is used to calculate the PPP loan amount—along with their PPP applications.³¹²

For self-employed farmers and ranchers with employees, Form 941, Form 943, or other tax forms showing payroll processor records must be provided.³¹³ In addition, evidence of any group retirement and health insurance contributions, if applicable.³¹⁴ Additionally, in order to establish that the individual was in operation on February 15, 2020, a payroll statement, bank statement, book of record, or similar documentation from that pay period must be submitted.³¹⁵

³¹⁰ See generally First Draw PPP Rule, 86 Fed. Reg. 3692, 3700 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 1 (March 12, 2021).

³¹¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3700-3701 (January 14, 2021). The First Draw PPP Rule also requires that self-employed borrowers with employees provide state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020, or equivalent payroll processor records. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021).

³¹² First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 1 (March 12, 2021).

³¹³ First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 3 (March 12, 2021).

³¹⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021). The First Draw PPP Rule also requires that self-employed farmers and ranchers with employees provide state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020, or equivalent payroll processor records. See First Draw PPP Rule, 86 Fed. Reg. 3692, 3701 (January 14, 2021).

³¹⁵ First Draw PPP Rule, 86 Fed. Reg. 3692, 3701-3702 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 3 (March 12, 2021).

4. Additional Documentation for Partnerships and Nonprofits

Partnerships and nonprofits must provide additional tax documentation to support their first draw PPP loan applications.³¹⁶

B. Documentation Required for Second Draw PPP Loans

The documentation required when applying for a second draw PPP loan are very similar to the documentation requirements for a first draw PPP loan.³¹⁷ Accordingly, when applying for a second draw PPP loan, the documentation requirements for first draw PPP loans—described immediately above—should be followed, with the following exceptions.

1. Borrower Elects to Use 2019 Forms—Additional Payroll Documentation May Not be Required

Under certain circumstances, a borrower applying for a second draw PPP loan will not need to provide any additional payroll documentation with their second draw PPP loan application. In order for this rule to apply, the following three conditions must be true: (1) the borrower must have used calendar year 2019 to determine their first draw PPP loan amount; (2) the borrower must use calendar year 2019 when determining their second draw PPP loan amount (as opposed to calendar year 2020); and (3) the lender for the borrower's first draw and second draw PPP loans must be the same.³¹⁸ Under these circumstances, the borrower's lender will already have the necessary payroll documentation and therefore the borrower is not required to submit the documentation again. If, however, the lender believes it would be useful to have additional documentation when processing the borrower's second draw PPP loan application, the lender may request that the borrower provide other documents.³¹⁹

2. Documentation Required for Loans Greater than \$150,000

In addition to the documentation requirements described above for first draw PPP loans, for second draw PPP loans with a principal amount greater than 150,000 dollars, borrowers must also provide documentation to substantiate that they experienced a revenue reduction of at least 25 percent in 2020 as compared to 2019.³²⁰ This could include annual tax forms or a copy of the borrower's quarterly income or bank statements. The documentation must support the amounts listed on the borrower's second draw PPP application.³²¹ The documentation must be provided at the time the borrower submits the second draw PPP loan application.

³¹⁶ See First Draw PPP Rule, 86 Fed. Reg. 3692, 3702 (January 14, 2021); SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Questions 4, 6 (March 12, 2021).

³¹⁷ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3716, 3720 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Maximum Loan Amounts, Questions 1-7 (March 12, 2021).

³¹⁸ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3716, 3720 (January 14, 2021).

³¹⁹ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3716 (January 14, 2021).

³²⁰ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720-3721 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 6 (March 12, 2021).

³²¹ SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 6 (March 12, 2021).

3. Documentation Required for Loans Less than \$150,000

For second draw PPP loans with a principal amount of 150,000 dollars or less, borrowers must provide with their second draw PPP application the same payroll documentation as that required for a first draw PPP loan. In addition, borrowers must have documentation to substantiate that they experienced a revenue reduction of at least 25 percent in 2020 as compared to 2019, but that documentation need only be provided at, or before, the time the borrower requests loan forgiveness.³²² In other words, unlike with loans greater than 150,000 dollars, revenue reduction documentation does not need to be submitted with the second draw PPP loan application. If, however, the borrower does not apply for loan forgiveness, the lender may nonetheless request documentation to support the borrower's revenue reduction.³²³

Sufficient documentation of revenue reduction could include annual tax forms or a copy of the borrower's quarterly income or bank statements.³²⁴ The documentation must support the amounts listed on the borrower's second draw PPP application.

III. Receive PPP Loan Funds Within Ten Days

Under the rules for both first draw and second draw PPP loans, a lender must disburse the loan funds to the borrower within ten calendar days after the loan is approved.³²⁵ The loan must be disbursed in one lump sum. For purposes of this rule, a loan is considered approved when SBA assigns it a loan number.³²⁶

³²² Second Draw PPP Rule, 86 Fed. Reg. 3712, 3720-3721 (January 14, 2021); SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Question 7 (March 12, 2021).

³²³ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3721 (January 14, 2021).

³²⁴ SBA and Treasury, How to Calculate Revenue Reduction and Loan Amounts for Second Draw PPP Loans, Revenue Reduction Questions 4, 7 (March 12, 2021).

³²⁵ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 (January 14, 2021).

³²⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021).

Chapter Five: Requesting a Loan Increase for First Draw PPP Loans

The Economic Aid Act provides a few narrow circumstances under which a borrower who has previously received a PPP loan can request a loan recalculation based on the new PPP rules outlined in the Act.³²⁷ In general, the ability to apply for a loan increase will only apply if the recalculation would lead to an increase in the original PPP loan amount.

The following sections describe when a borrower may be eligible to apply for an increased first draw PPP loan.

I. Eligibility for First Draw PPP Loan Increases

The ability to request an increase in the amount of an existing PPP loan applies only to certain farmers and ranchers, seasonal employers, and partnerships. In addition, some borrowers who either returned or did not accept the full amount of their PPP loan may be able to request an increase.

A. Some Farmers and Ranchers

Some farmers and ranchers may be able to request an increase in the amount of a first draw PPP loan.³²⁸ In order to qualify, three conditions must be met.³²⁹ First, the farmer or rancher must have previously received a PPP loan. Second, the borrower must be eligible for an increased PPP loan amount under the new rules that were enacted by the Economic Aid Act. In other words, if the farmer or rancher were to use their Schedule F, line 9 for gross income when calculating the PPP loan amount (as opposed to Schedule F, line 31 (net farm income), the calculation must result in an increased loan amount. Finally, SBA cannot have already provided a loan forgiveness payment to the borrower's lender. In other words, if the borrower received loan forgiveness, once the lender gets a loan forgiveness payment from SBA, the borrower is no longer eligible.

If a borrower qualifies for a loan increase on its first draw PPP loan, the lender of the first draw loan must submit a loan increase request by March 31, 2021.³³⁰ However, on March 30, an Act of Congress extended the overall application deadline for PPP to May 31, 2021.³³¹ It is likely, though not certain, that this extended deadline will also apply to requests for first draw PPP loan increases.

Only the lender can submit a loan increase request. Any loan increase cannot exceed the maximum loan amount for which the farmer is eligible under PPP rules. Any farmer

³²⁷ Economic Aid Act §§ 312, 313(a)(2) (December 27, 2020).

³²⁸ Economic Aid Act § 313(a)(2) (December 27, 2020).

³²⁹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 3 (January 13, 2021).

³³⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 3 (January 13, 2021).

³³¹ PPP Extension Act (March 30, 2021).

seeking a loan increase must provide its lender with documentation to support the farmer's gross income from their Schedule F.³³²

B. Some Seasonal Employers

Some seasonal employers may be able to request an increase in the amount of a first draw PPP loan. In order to qualify, three primary conditions must be met.³³³ First, the seasonal employer must have previously received a PPP loan. Second, the calculation of a seasonal employer's PPP loan—under the modified rules provided for by the Economic Aid Act—must result in the potential for an increased PPP loan amount. In other words, if the seasonal employer were to calculate its PPP loan amount using the average monthly payroll payments for any twelve-week period between February 15, 2019, and February 15, 2020, the PPP amount must be greater than what it was when the seasonal employer received its first draw PPP loan. Finally, SBA cannot have already provided a loan forgiveness payment to the seasonal employer's lender.

If a seasonal employer qualifies for a loan increase on its first draw PPP loan, the lender of the first draw loan must submit a loan increase request by March 31, 2021.³³⁴ However, on March 30, 2021, an Act of Congress extended the overall application deadline for PPP to May 31, 2021.³³⁵ It is likely, though not certain, that this extended deadline will also apply to requests for first draw PPP loan increases.

Only the lender can submit a loan increase request. Any loan increase cannot exceed the maximum loan amount for which the seasonal employer is eligible under PPP rules. Any seasonal employer seeking a loan increase must provide its lender with documentation to support the average payroll costs for the newly-selected twelve-week period.

C. Some Partnerships

Some partnerships may be able to request an increase in the amount of a first draw PPP loan. In order to qualify, three primary conditions must be met.³³⁶ First, the partnership must have previously received a PPP loan. Second, the PPP loan must have only included amounts necessary for the payroll costs of the partnership's employees and eligible operating expenses, and not any amounts for partner compensation. Finally, SBA cannot have already provided a loan forgiveness payment to the partnership's lender.

³³² First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 3 (January 13, 2021).

³³³ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 2 (January 13, 2021).

³³⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 2 (January 13, 2021).

³³⁵ PPP Extension Act (March 30, 2021).

³³⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 2 (January 13, 2021).

If a partnership qualifies for a loan increase on its first draw PPP loan, the lender of the first draw loan must submit a loan increase request by March 31, 2021.³³⁷ However, on March 30, 2021, an Act of Congress extended the overall application deadline for PPP to May 31, 2021.³³⁸ It is likely, though not certain, that this extended deadline will also apply to requests for first draw PPP loan increases.

Only the lender can submit a loan increase request. Any loan increase cannot exceed the maximum loan amount for which the partnership is eligible under PPP rules. This means, for example, that a loan increase based on partner compensation will only take into account each partner's self-employment income, up to 100,000 dollars.³³⁹ Any partnership seeking a loan increase must provide its lender with documentation to support the inclusion of partner compensation within the loan calculation.³⁴⁰

D. Other Eligible Borrowers for a First Draw PPP Loan Increase

In addition to the three cases described above, there are three other circumstances under which a borrower may be eligible to apply for a loan increase on their first draw PPP loan.³⁴¹

1. Fully Repaid First Draw Loan Prior to December 27, 2020

If a borrower received a first draw PPP loan, and the borrower fully repaid that loan before December 27, 2020, the borrower may reapply for a new first draw loan based on the new PPP rules enacted under the Economic Aid Act.³⁴² To be eligible, SBA cannot have provided any loan forgiveness on the borrower's loan.

2. Repaid Part of a First Draw Loan Prior to December 27, 2020

If a borrower received a first draw PPP loan, and the borrower repaid or returned part of that loan before December 27, 2020, the borrower may request a loan increase on the loan, but only for the difference between the amount that was initially approved and how much of the loan the borrower retained.³⁴³ In other words, a borrower in this circumstance cannot receive additional loan funds in excess of the loan amount that was approved in the first place. To be eligible, SBA cannot have provided any loan forgiveness on the borrower's loan.

³³⁷ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 2 (January 13, 2021).

³³⁸ PPP Extension Act (March 30, 2021).

³³⁹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021). For additional guidance on how to calculate first draw PPP loan amounts for partnerships, see SBA and Treasury, How to Calculate Maximum Amounts for First Draw PPP Loans, Question 4 (March 12, 2021).

³⁴⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 2 (January 13, 2021).

³⁴¹ See generally Economic Aid Act § 312(b) (December 27, 2020).

³⁴² Economic Aid Act § 312(b) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 3 (January 13, 2021).

³⁴³ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, pages 4-5 (January 13, 2021).

SBA provides an example of this circumstance.³⁴⁴ Suppose a borrower was approved for, and received, a first draw PPP loan for 100,000 dollars. The borrower decides to return twenty-five thousand dollars because the borrower was unable to spend those funds during the covered period. This means the borrower kept seventy-five thousand dollars, none of which has been forgiven. Under this circumstance, the borrower could request a loan increase of up to twenty-five thousand dollars, which would bring the borrower's outstanding balance back to the original 100,000 dollars for which the borrower was approved.

3. Not Accept Full Amount of an Approved First Draw Loan Prior to December 27, 2020

If a borrower received a first draw PPP loan, but did not accept the full amount of funds for which the borrower was approved, the borrower can request a loan increase for up to the original approval amount.³⁴⁵ To qualify, SBA cannot have provided any loan forgiveness on the borrower's loan.

II. Deadline to Request a First Draw Loan Increase—March 31, 2021—Or Maybe Later

If a borrower qualifies to request an increase in a first draw PPP loan—under any of the six circumstances described above—the lender of that first draw loan must submit the request to SBA by March 31, 2021.³⁴⁶

On March 30, 2021, an Act of Congress extended the overall application deadline for PPP to May 31, 2021.³⁴⁷ It is likely, though unknown for certain, that this extended deadline will also apply to lenders submitting loan increase requests.

Only the lender of the borrower's original first draw PPP loan can submit the loan increase request.³⁴⁸

III. Disbursement of Increased First Draw PPP Loan Funds

If a borrower qualifies for an increased first draw PPP loan, the lender must pay the borrower in a single disbursement within ten calendar days of the successful processing of the loan increase request.³⁴⁹

³⁴⁴ SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 5 (January 13, 2021).

³⁴⁵ Economic Aid Act § 312(b) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, pages 5-6 (January 13, 2021).

³⁴⁶ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 2 (January 13, 2021).

³⁴⁷ PPP Extension Act (March 30, 2021).

³⁴⁸ SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 7 (January 13, 2021).

³⁴⁹ SBA Procedural Notice, No. 5000-20076, First Draw Paycheck Protection Program Loan Increases After Enactment of the Economic Aid Act, page 6 (January 13, 2021).

IV. Impact of Increased First Draw PPP Loan Funds on Receiving a Second Draw Loan

There are no rules that prevent a borrower from both requesting a loan increase on a first draw PPP loan and also submitting an application for a second draw PPP loan. However, before a second draw PPP loan can be disbursed, the borrower must have used the entirety of their first draw loan—including any loan increase—on allowable expenses.³⁵⁰

³⁵⁰ First Draw PPP Rule, 86 Fed. Reg. 3692 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3721 (January 14, 2021).

Chapter Six: PPP Loan Forgiveness and Potential Repayment

In general, the loan forgiveness rules for first draw and second draw PPP loans are the same.³⁵¹ This Guide notes where there are differences, and unless noted otherwise, the following loan forgiveness rules apply to both first draw and second draw PPP loans.

I. Loan Forgiveness Covered Period

To receive forgiveness on a PPP loan, the farmer must use PPP funds for eligible purposes during a specific time period that is called the loan forgiveness “covered period.”³⁵² The loan forgiveness covered period for first draw and second draw PPP loans begins on the day the lender disburses the PPP loan funds.³⁵³ The covered period ends on any date selected by the borrower that is between eight weeks and twenty-four weeks following the loan disbursement date. However, the covered period for a first draw PPP loan and a second draw PPP loan cannot overlap.³⁵⁴ In other words, a borrower must use all proceeds from a first draw PPP loan on eligible expenses before a second draw PPP loan can be disbursed.

The definition of a covered period was amended by the Economic Aid Act on December 27, 2020.³⁵⁵ Prior to the passing of the Economic Aid Act, the rules for loan forgiveness allowed borrowers with biweekly (or more frequent) payroll to use an “alternative payroll covered period.”³⁵⁶ The amended definition of a covered period provided for in the Economic Aid Act eliminated the need for an alternative covered period.³⁵⁷ There is now only one definition of a loan forgiveness covered period that applies to all first draw and second draw PPP loans.

II. Expenses that Qualify for Loan Forgiveness

As explained below, only certain expenses are eligible for PPP loan forgiveness.

A. Payroll Expenses that Qualify for Forgiveness

The types of payroll expenses that qualify for PPP loan forgiveness will depend on whether the borrower is an employer with employees or a self-employed individual. Because self-employed individuals generally are not on payroll, SBA calls the payroll equivalent for these borrowers “owner compensation replacement.”³⁵⁸

³⁵¹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3722 (January 14, 2021).

³⁵² Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021).

³⁵³ First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 20 (March 12, 2021).

³⁵⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021).

³⁵⁵ Economic Aid Act § 306 (December 27, 2020); SBA and Treasury Department, PPP FAQs, Question 20 (March 12, 2021).

³⁵⁶ See, for example, PPP Interim Final Rule—Revisions to Loan Forgiveness, 85 Fed. Reg. 38,304, 38,307 (June 26, 2020); PPP Loan Forgiveness Application Instructions, Form 3508, Page 1 (June 16, 2020).

³⁵⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021).

³⁵⁸ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

Payroll costs are not eligible for loan forgiveness if they are qualified wages taken into account in determining the Employer Retention Credit.³⁵⁹

1. Qualifying Payroll Expenses for Employers with Employees

PPP loan forgiveness will apply to payroll costs incurred or paid during the loan forgiveness covered period.³⁶⁰ As defined more fully above, payroll costs include both employee compensation, such as salaries, wages, and tips, as well as costs related to employee benefits, such as payment for vacation, parental, family, medical or sick leave, and group insurance benefits for health care, life, disability, vision, or dental coverage.³⁶¹ The amount of payroll costs that will be considered for forgiveness are capped at 100,000 dollars per year per employee, as prorated for the period during which the payments are made or the obligations incurred.³⁶²

If a borrower pays furloughed employees their salary, wages, or commissions during the covered period, those payments are also eligible for forgiveness, so long as the furloughed employee's total compensation does not exceed the 100,000 dollars prorated cap.³⁶³ In addition, hazard pay and bonuses are also eligible for forgiveness if the employee's total compensation does not exceed the 100,000 dollar cap.

Lenders are required to make the PPP loan disbursement no later than ten calendar days from the date the loan was approved.³⁶⁴ Borrowers, therefore, do not have the option of delaying when the covered period begins so as to capture more payroll costs.

Payroll costs are considered "paid" on the day that paychecks are distributed or automatically deposited into a borrower's account.³⁶⁵ Payroll costs are typically "incurred" on the day the employee's pay is earned.³⁶⁶ If employees are not performing work, but are still on their employer's payroll, the payroll costs are incurred based on the schedule established by the employer.³⁶⁷ Payroll costs that are incurred during the last pay period before the end of the covered period must be paid on or before the next regular payroll date in order to be eligible for forgiveness.

³⁵⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021).

³⁶⁰ Economic Aid Act § 306 (December 27, 2020); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021).

³⁶¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3702-3703, 3706 (January 14, 2021).

³⁶² Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021).

³⁶³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288-8289 (February 5, 2021).

³⁶⁴ First Draw PPP Rule, 86 Fed. Reg. 3692, 3710 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3717 n. 34 (January 14, 2021); SBA and Treasury Department, PPP FAQs, Question 20 (March 12, 2021).

³⁶⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021).

³⁶⁶ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 2 (January 19, 2021).

³⁶⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021); PPP Interim Final Rule—Revisions to Loan Forgiveness, 85 Fed. Reg. 38,304, 38,307 (June 26, 2020). This would usually be the day the work would have been performed.

2. Owner Compensation Replacement for Self-Employed Individuals

Self-employed individuals who file a Schedule C or a Schedule F can receive PPP loan forgiveness for their self-employment compensation, what SBA calls “owner compensation replacement.”³⁶⁸ An individual’s total owner compensation replacement may not exceed 100,000 dollars on an annual basis, as prorated for borrower’s selected loan forgiveness covered period.³⁶⁹ If all requirements are met, the amount of PPP loan forgiveness for self-employed borrowers can be up to the full principal amount of the borrower’s loan, plus any accrued interest.³⁷⁰

The loan forgiveness amounts for owner compensation replacement apply to each owner across all businesses.³⁷¹ Owner compensation replacement does not include any qualified sick leave, or equivalent, for which a credit is claimed under sections 7002 or 7004 of the Families First Coronavirus Response Act.³⁷² In addition, no additional PPP loan forgiveness is provided for retirement, health, life, disability, vision, or dental insurance contributions by self-employed individuals who file a Schedule C or Schedule F because such expenses are usually paid out of their net self-employment income.³⁷³

The exact amount of owner compensation replacement that is eligible for PPP loan forgiveness will depend on whether the borrower files a Schedule F or a Schedule C. In addition, the amount of loan forgiveness will depend upon the duration of the loan forgiveness covered period that the borrower selects.

a. Self-Employed Schedule F Filers

For farmers who file a Schedule F, PPP loan forgiveness—for owner compensation replacement—is based on 2.5 months’ worth of the farmer’s 2019 or 2020 Schedule F gross income.³⁷⁴ If the borrower does not have employees, the owner compensation replacement will be the same as the farmer’s gross income.³⁷⁵ If the farmer has employees, the owner compensation replacement will be the difference between the farmer’s gross income and employee payroll costs.

If a farmer selects a loan forgiveness period of less than 2.5 months, the loan forgiveness will be a prorated amount of the farmer’s 2019 or 2020 gross income,

³⁶⁸ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

³⁶⁹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289 (February 5, 2021).

³⁷⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

³⁷¹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289 (February 5, 2021).

³⁷² Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

³⁷³ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289 (February 5, 2021).

³⁷⁴ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 n. 20 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 n. 20 (February 5, 2021). Gross income can be found on line 9 of IRS Form 1040 Schedule F. See, for example, IRS Form 1040, Schedule F (2020), at: <https://www.irs.gov/pub/irs-pdf/f1040sf.pdf>.

³⁷⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 n. 20 (February 5, 2021).

based on the length of the loan forgiveness period.³⁷⁶ For a loan forgiveness period of 2.5 months or longer, forgiveness will be capped at 2.5 months' worth of the farmer's 2019 or 2020 gross income, up to a maximum of \$20,833.

b. Self-Employed Schedule C Filers

The PPP loan forgiveness for self-employed Schedule C filers will differ depending on whether the borrower calculated their PPP loan amount using their Schedule C net profit or gross income.

For Schedule C filers who used their net profit to calculate their PPP loan amount, forgiveness will be based on that net profit.³⁷⁷ If the borrower selects a loan forgiveness period of less than 2.5 months, PPP loan forgiveness will be a prorated amount of the borrower's 2019 or 2020 net profit, depending on the length of the loan forgiveness period.³⁷⁸ For a loan forgiveness period of 2.5 months or longer, forgiveness will be capped at 2.5 months' worth of the borrower's 2019 or 2020 net profit, up to a maximum of \$20,833.

For Schedule C filers who used their gross income to calculate their PPP loan amount, forgiveness will be based on what SBA calls "proprietor expenses."³⁷⁹ According to SBA, proprietor expenses are intended to reflect the borrower's business expenses and personal compensation, but not any payroll expenses.³⁸⁰ For this reason, if the borrower does not have employees, proprietor expenses are the same as gross income, but if the borrower has employees, proprietor expenses will be the difference between the borrower's gross income and employee payroll expenses.³⁸¹ If the borrower selects a loan forgiveness period of less than 2.5 months, PPP loan forgiveness will be a prorated amount of the borrower's 2019 or 2020 gross income, depending on the length of the loan forgiveness period.³⁸²

³⁷⁶ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 n. 20 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 n. 20 (February 5, 2021). For example, if a self-employed borrower elects an eight-week covered period, the owner compensation replacement would be capped at eight weeks' worth of the borrower's 2019 or 2020 compensation—or, 8/52 of the compensation. Total owner compensation cannot be more than \$15,385, which is how much the compensation total would be with 100,000 dollars as the base annual compensation. See Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289 n. 41 (February 5, 2021).

³⁷⁷ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021). Net profit can be found on line 31 of IRS Form 1040 Schedule C. See, for example, IRS Form 1040, Schedule C (2020), at: <https://www.irs.gov/pub/irs-pdf/f1040sc.pdf>.

³⁷⁸ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021). For example, if a self-employed borrower elects an eight-week covered period, the owner compensation replacement would be capped at eight weeks' worth of the borrower's 2019 or 2020 compensation—or, 8/52 of the compensation. Total compensation cannot be more than \$15,385, which how much the compensation total would be with 100,000 dollars the base annual compensation. See Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289 (February 5, 2021).

³⁷⁹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 n. 20 (March 8, 2021).

³⁸⁰ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,150-13,151 (March 8, 2021).

³⁸¹ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 n. 20 (March 8, 2021).

³⁸² Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 n. 20 (March 8, 2021). For example, if a self-employed borrower elects an eight-week covered period, the owner compensation replacement would be capped at eight weeks' worth of the borrower's 2019 or 2020 compensation—

For a loan forgiveness period of 2.5 months or longer, forgiveness will be capped at 2.5 months' worth of the borrower's 2019 or 2020 gross income, up to a maximum of \$20,833.

B. Non-Payroll Expenses that Qualify for Forgiveness

Seven non-payroll expenses qualify for PPP loan forgiveness.³⁸³ These are: (1) business rent or lease payments; (2) interest payments on business mortgage obligations (not including pre-payments or principal payments); (3) business utility payments for electricity, gas, water, transportation, telephone, and internet services; (4) covered operations expenditures; (5) covered property damage costs; (6) covered supplier costs; and (7) covered worker protection expenditures.³⁸⁴ These expenses have the same definition as provided earlier in this Guide under the section on allowable uses of PPP loans.

For self-employed borrowers, the expenses are eligible for forgiveness only if they can be deducted on a borrower's Schedule F or Schedule C as a business expense.³⁸⁵

Any amounts that are attributable to a tenant or subtenant of the borrower, or to household expenses, are not eligible as non-payroll expenses for purposes of PPP loan forgiveness.³⁸⁶

Eligible non-payroll expenses can be forgiven if they are either paid or incurred during the covered period.³⁸⁷ Non-payroll expenses that are incurred during the covered period must be paid on or before the next regular billing date in order to be eligible for forgiveness, even if the next billing date falls outside of the covered period.³⁸⁸ In addition, eligible non-payroll expenses include only those costs that were both paid and incurred only once.³⁸⁹

1. Business Mortgage Interest Payments

The payment of interest on a business mortgage obligation for real or personal property is forgivable so long as the obligation was incurred before February 15,

or, 8/52 of the compensation—not to exceed \$15,385 (this value is based on the maximum 100,000 dollar owner compensation that can be taken into account for purposes of PPP loan forgiveness). See Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,153 (March 8, 2021).

³⁸³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287, 8289-8290 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021).

³⁸⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287, 8,289 (February 5, 2021); PPP Loan Forgiveness Calculation Form, SBA Form 3508, page 1 (January 19, 2021); Flexibility Act, § 3(b)(2) (June 5, 2020).

³⁸⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3705 (January 14, 2021); Self-Employed PPP Interim Final Rule, 85 Fed. Reg. 21,747, 21,749 (April 20, 2020).

³⁸⁶ For various examples of expenses that do not qualify as non-payroll expenses, see Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290 (February 5, 2021).

³⁸⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 2 (January 19, 2021).

³⁸⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 3 (January 19, 2021). For an example of determining non-payroll expenses that are eligible for forgiveness, see Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8289-8290 (February 5, 2021).

³⁸⁹ Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 3 (January 19, 2021).

2020.³⁹⁰ This does not include any prepayment or payment of principal. In addition, Mortgage interest payments made to a related party are not eligible for loan forgiveness.³⁹¹

For self-employed borrowers, forgivable business mortgage interest payments are only those for which the borrower has claimed—or is entitled to claim—a deduction on their 2019 or 2020 Schedule C or Schedule F.³⁹²

2. Business Rent or Lease Payments

The payment of business rent or lease obligations are an allowable use of PPP loan funds so long as the obligation was in force before February 15, 2020.³⁹³

Rent payments to a related party are eligible for forgiveness so long as the payments do not exceed the amount of mortgage interest owed on the property during the covered period (that is attributable to the space the borrower is renting).³⁹⁴ Under this rule, a related party is anyone who shares any common ownership between the business and the property owner.

For self-employed borrowers, forgivable business rent or lease payments are only those for which the borrower has claimed—or is entitled to claim—a deduction on their 2019 or 2020 Schedule C or Schedule F.³⁹⁵

3. Business Utility Payments

Business utility payments for electricity, gas, water, transportation, telephone, and internet services are a forgivable use of PPP loan funds, so long as the service began before February 15, 2020.³⁹⁶

For self-employed borrowers, allowable business utility payments are only those for which the borrower has claimed—or is entitled to claim—a deduction on their 2019 or 2020 Schedule C or Schedule F.³⁹⁷

4. Covered Operations Expenditures

Covered operations expenditures are eligible for PPP loan forgiveness.³⁹⁸ These include payments for any business software or cloud computing service that facilitates:

³⁹⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 2 (January 19, 2021).

³⁹¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290 (February 5, 2021).

³⁹² Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

³⁹³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, pages 2-3 (January 19, 2021).

³⁹⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290 (February 5, 2021).

³⁹⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

³⁹⁶ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 3 (January 19, 2021).

³⁹⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

³⁹⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021).

(1) business operations; (2) product or service delivery; (3) the processing, payment, or tracking of payroll expenses; (4) human resources, sales and billing functions; or (5) the accounting or tracking of supplies, inventory, records and expenses.³⁹⁹

For self-employed borrowers, allowable covered operations expenditures are only those which are deductible on Form 1040 Schedule C or Schedule F.⁴⁰⁰

5. Covered Property Damage Costs

Covered property damage costs are eligible for PPP loan forgiveness.⁴⁰¹ These are costs that are related to property damage and vandalism or looting arising from public disturbances that occurred during 2020 and which were not covered by insurance or other compensation.⁴⁰²

For self-employed borrowers, allowable covered property damage costs are only those which are deductible on Form 1040 Schedule C or Schedule F.⁴⁰³

Although covered property damage costs became an allowable use of PPP loans following the passing of the Economic Aid Act, these expenditures are allowed as if they were included in the CARES Act.⁴⁰⁴ In other words, these are allowable uses of a PPP loan, regardless of when the loan was made.

6. Covered Supplier Costs

Covered supplier costs are eligible for PPP loan forgiveness.⁴⁰⁵ These are defined as expenditures made by a borrower to a supplier of certain types of goods.⁴⁰⁶ Specifically, the goods must be those that are both essential to the borrower's operations at the time the expenditure is made, and for which there is a contract, order or purchase order. To qualify as an eligible use, the contract, order or purchase order must have been in effect prior to the start of the borrower's covered period, or—for perishable goods—it must be in effect either before or any time during the covered period.

For self-employed borrowers, allowable covered supplier costs are only those which are deductible on Form 1040 Schedule C or Schedule F.⁴⁰⁷

³⁹⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021).

⁴⁰⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

⁴⁰¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021).

⁴⁰² Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021).

⁴⁰³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

⁴⁰⁴ Economic Aid Act § 304(a)-(b) (December 27, 2020); First Draw PPP Rule, 86 Fed. Reg. 3692, 3704 (January 14, 2021).

⁴⁰⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021).

⁴⁰⁶ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021).

⁴⁰⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

7. Covered Worker Protection Expenditures

Covered worker protection expenditures are eligible for PPP loan forgiveness.⁴⁰⁸ These include operating and capital expenditures that aid a business in adapting to COVID-19-related requirements or guidance for sanitation, social distancing, worker safety, or customer safety that are issued by various federal, state, and local agencies.⁴⁰⁹ To qualify as eligible uses of PPP loan funds, these expenditures must have occurred between March 1, 2020, and whenever the national emergency related to COVID-19 ends. Forgivable covered worker protection expenditures do not apply to residential real property or intangible property.⁴¹⁰

The rules provide various examples of allowed covered worker protection expenditures. These include the purchase, maintenance or renovation of assets that create or expand: (1) a drive-through window facility; (2) an indoor, outdoor, or combined air or air pressure ventilation or filtration system; (3) a physical barrier such as a sneeze guard; (4) an expansion of additional indoor, outdoor, or combined business space; (5) an onsite or offsite health screening capability; and (6) other assets related to compliance with COVID-19 requirements or guidance.⁴¹¹

Covered worker protection expenditures can also include the purchase of: (1) certain covered materials, such as PPE surgical masks, PPE nitrile gloves; level 3 and 4 surgical gowns, and syringes and hypodermic needles;⁴¹² (2) particulate filtering facepiece respirators approved by OSHA; and (3) other kinds of personal protective equipment, as determined by the Secretary of HHS and Secretary of Labor.⁴¹³

For self-employed borrowers, forgivable covered worker protection expenditures are only those which are deductible on Form 1040 Schedule C or Schedule F.⁴¹⁴

C. Principal and Interest are Eligible for Forgiveness

Both principal and interest on PPP loans are eligible for forgiveness.⁴¹⁵

⁴⁰⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021).

⁴⁰⁹ The requirements or guidance should come from the Department of Health and Human Services (HHS), the Centers for Disease Control (CDC), the Occupational Safety and Health Administration (OSHA), or any state or local government. Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286 (February 5, 2021).

⁴¹⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

⁴¹¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286-8287 (February 5, 2021).

⁴¹² For a full list of the covered materials, see 44 C.F.R. § 328.103(a) (2021).

⁴¹³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8286-8287 (February 5, 2021).

⁴¹⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021).

⁴¹⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8285 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); SBA and Treasury Department, PPP FAQs on Loan Forgiveness, Question 3 (October 13, 2020).

III. Requirements for Receiving Full Loan Forgiveness

In order to receive full forgiveness of a first draw or second draw PPP loan, the following requirements must be followed.⁴¹⁶ If the requirements are not met, the PPP loan forgiveness may be reduced.

A. At Least 60 Percent of Loan Spent on Payroll

In order to receive full loan forgiveness for a first draw or second draw PPP loan, the borrower must use at least 60 percent of the loan proceeds for payroll costs.⁴¹⁷ This means that no more than 40 percent of the loan may be used for nonpayroll costs.⁴¹⁸ So, if the business borrows 10,000 dollars, to have the whole loan forgiven at least 6000 dollars of the loan would need to go to payroll expenses.

For some borrowers, documentation of these expenses will be required when requesting loan forgiveness.⁴¹⁹ Loan forgiveness documentation requirements are described later in this Guide. However, the Economic Aid Act now provides that any borrower who received a PPP loan of 150,000 dollars or less is not required to submit any application or documentation in order to receive loan forgiveness.⁴²⁰ Borrowers with loans of 150,000 dollars or less will still need to retain relevant documentation in order to be able to prove compliance with PPP requirements, if asked to do so.

B. Wages Remain Within 75 Percent

Generally, in order to receive full PPP loan forgiveness, the borrower must keep each employee's payroll wages and salary within 75 percent of what they were during the most recent full quarter that the employee was employed prior to the start of the covered period.⁴²¹ This determination is made on a per employee basis, not on the aggregate of all employees. This rule applies to each new employee in 2020 and 2021, as well as each existing employee who was not paid more than the annualized equivalent of 100,000 dollars during any pay period in 2019.

⁴¹⁶ See generally First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Second Draw PPP Rule, 86 Fed. Reg. 3712, 3722 (January 14, 2021).

⁴¹⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Flexibility Act, § 3(b)(2) (June 5, 2020).

⁴¹⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); Flexibility Act, § 3(b)(2) (June 5, 2020).

⁴¹⁹ First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021); CARES Act § 1106(e) (March 27, 2020).

⁴²⁰ First Draw PPP Rule, 86 Fed. Reg. 3692, 3706 (January 14, 2021). PPP Loan Forgiveness Application Form 3508S Instructions for Borrowers (January 19, 2021).

⁴²¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291-8292 (February 5, 2021). For purposes of this rule, a reduction in wages or salaries will only lead to a reduction in loan forgiveness for those reductions that are not due to reduced working hours. In other words, if an employee's hourly wage remained the same, but the employee went from working forty hours per week to twenty hours per week, the borrower's loan forgiveness would not be reduced for not maintaining adequate payroll wages.

If wages and salaries decrease more than 25 percent, the borrower's total loan forgiveness amount will be reduced by the dollar amount that exceeds the 25 percent.⁴²²

C. Full-Time Equivalent (FTE) Employees Remain the Same

In order to receive full loan forgiveness, the borrower must keep the same number of full-time staff or their full-time equivalent (FTE) employees⁴²³ during the covered period.⁴²⁴ To determine whether reductions have occurred, SBA will compare the borrower's number of FTE employees during the borrower's covered period against the FTE employee numbers from what SBA calls the borrower's "reference period."⁴²⁵ The borrower gets to choose which reference period to use. The choice is between either February 15, 2019, through June 30, 2019, or January 1, 2020, through February 29, 2020.⁴²⁶ For seasonal employers, the reference period can be either of the two just mentioned, or a consecutive twelve-week period between February 15, 2019, and February 15, 2020.⁴²⁷

If the borrower does not comply with these requirements, the amount of the loan forgiveness will be reduced by a percentage that represents the same percentage reduction in FTE employees.⁴²⁸ For example, suppose a borrower had 10.0 FTE during the borrower's selected reference period, but that number declined to 8.0 FTE during the borrower's covered period.⁴²⁹ That is a reduction in FTE employees of 20 percent, and therefore the borrower would only receive 80 percent of the borrower's otherwise-eligible PPP loan forgiveness.

IV. Exemptions to Loan Forgiveness Reductions

As explained above, the amount of a borrower's PPP loan forgiveness may be reduced if certain requirements are not met. However, there are various exemptions to those requirements that prevent a borrower's loan forgiveness from being reduced. These exemptions are explained below.

⁴²² For example, suppose a borrower has elected to use a 24-week covered period, and during that covered period the borrower reduced a full-time employee's weekly salary from 1000 dollars per week to 700 dollars per week. This is a reduction of 30 percent. Assuming the employee continued working the same number of hours, the first 25 percent of that reduction—or 250 dollars—would be exempt from any reductions in PPP loan forgiveness. However, the borrower's otherwise-eligible loan forgiveness amount would be reduced by the remaining 50 dollars per week during the covered period. Because the borrower has a 24-week covered period, this would amount to a total reduction of 1,200 dollars in the borrower's loan forgiveness amount. See Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292 (February 5, 2021).

⁴²³ Under the rules, a full-time employee is someone who works forty hours per week or more, on average. Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291 (February 5, 2021). The rules also provide details on how to calculate FTE employees.

⁴²⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290 (February 5, 2021).

⁴²⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290-8291 (February 5, 2021).

⁴²⁶ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 4 (January 19, 2021).

⁴²⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 4 (January 19, 2021).

⁴²⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290-8291 (February 5, 2021).

⁴²⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291 (February 5, 2021).

A. Exemptions Based on Changes in Salaries and Wages

There are two exemptions to the general rule that the salary and wages of each employee must not be reduced by more than 25 percent.⁴³⁰ If a borrower qualifies for either of these exemptions, the borrower will not experience a reduction in loan forgiveness.

1. Employer Restores Hours

If a borrower reduces the salaries or wages of any employee between February 15, 2020, and April 26, 2020, but the reductions are eliminated by the last day of the borrower's covered period, no loan forgiveness reductions will be taken.⁴³¹

2. Borrower Has a PPP Loan of \$50,000 or Less

Loan forgiveness reductions will not be taken against any borrower that has a PPP loan of 50,000 dollars or less.⁴³² This rule does not apply to any borrower who, together with its affiliates, receive first draw or second draw PPP loans that total two million dollars or more.

B. Exemptions to Loan Forgiveness Reductions Based on Changes in FTE Employees

There are four different exemptions to the possible reductions in loan forgiveness due to changes in FTE employee numbers.⁴³³ If any of these four situations apply, a loan reduction will not occur.

1. Employer Lays Off an Employee and Later Tries to Restore Hours

Loan forgiveness reductions will not be taken if an employer lays off an employee and later tries to restore the employee's hours.⁴³⁴ For this exemption to apply, the following four requirements must be met. First, the employer must make a good-faith, written offer to restore the employee's hours. Second, the offer must be for the same number of hours earned by the employee right before the reduction in hours. Third, the employee must reject the offer. Fourth, the employer must have kept records of the offer and the employee rejection of the offer.

2. Inability to Rehire or Replace Employee

Loan forgiveness reductions do not apply if there are no other employees available for the employer to hire by the last day of the borrower's covered period.⁴³⁵ For this exemption to apply, the following must be true. First, the employer must make a good faith, written offer to rehire individuals who were employees on February 15, 2020.

⁴³⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291-8292 (February 5, 2021).

⁴³¹ For PPP loans made before December 27, 2020, the borrower must eliminate the salary or wage reductions by December 31, 2020. Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292 (February 5, 2021).

⁴³² Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292-8293 (February 5, 2021).

⁴³³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290 (February 5, 2021).

⁴³⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8290 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021); SBA and Treasury Department, PPP FAQs, Question 40 (March 12, 2021).

⁴³⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021).

Second, the employer must have been unable to hire similarly qualified employees by the last day of the covered period.⁴³⁶ In addition, the employer must be able to document the offer and rejection and the effort to find another employee. The borrower must also inform their state unemployment insurance office of the rejected offer within thirty days of that rejection.⁴³⁷

3. Employees Fired for Cause, Voluntarily Resign, or Ask for Reduction of Hours

Loan forgiveness reductions will not be taken if an employee is fired for cause, voluntarily resigns, or asks for a reduction of hours.⁴³⁸ For this exemption to apply, the firing, resignation, or reduced schedule must have occurred during the covered period. In such a situation, the borrower may count the employee at the same FTE level as before the firing, resignation, or reduction in hours.⁴³⁹

Borrowers relying on this exemption must keep records showing each employee that was fired for cause, voluntarily resigned, or voluntarily reduced their hours, and must provide those records if requested.⁴⁴⁰

4. Borrower has a PPP Loan of \$50,000 or Less

Loan forgiveness reductions will not be taken against any borrower that has a PPP loan of 50,000 dollars or less.⁴⁴¹ This rule does not apply to any borrower who, together with its affiliates, receive first draw or second draw PPP loans that total two million dollars or more.

C. Safe Harbor Rules that Prevent Loan Forgiveness Reductions

In addition to the various exemptions described above, there are what are called “FTE Reduction Safe Harbor” rules that—if met—protect a borrower from loan forgiveness reductions that might otherwise apply.⁴⁴² Under the current rules, there are two FTE reduction safe harbors.

⁴³⁶ For PPP loans made before December 27, 2020, the employer must have been unable to hire similarly qualified employees by December 31, 2020. See Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021).

⁴³⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291 (February 5, 2021).

⁴³⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021).

⁴³⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292 (February 5, 2021).

⁴⁴⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292 (February 5, 2021).

⁴⁴¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292-8293 (February 5, 2021).

⁴⁴² The PPP Loan Forgiveness Application refers to these as “FTE Reduction Safe Harbor” rules, while the most recent Amended PPP Loan Forgiveness Rule describes these as additional “exemptions.” Compare Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021) with Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291 (February 5, 2021).

1. FTE Reduction Safe Harbor 1—Unable to Return to Business Activity Due to COVID-19 Restrictions

Loan forgiveness reductions based on a reduction in FTE employees will not be taken if COVID-19 restrictions caused a reduction business activity.⁴⁴³ For this safe harbor to apply, the following must be true. First, the borrower must have been unable to operate—between February 15, 2020, and the end of the covered period—at the same level of business activity as before February 15, 2020. Second, the reason for the inability to return to the same level of operation must be that the business could not do so while meeting the requirements or guidance that was set to prevent the spread of COVID-19. The guidance must have been issued between March 1, 2020, and the last day of the covered period,⁴⁴⁴ and must be related to sanitation, social distancing, worker safety, or customer safety.⁴⁴⁵ State and local shutdown orders qualify for this exemption.⁴⁴⁶ Third, borrowers will need to certify, in good faith, that they can document that the reduction in business activity was directly or indirectly due to complying with this guidance. Documentation for this purpose means copies of the requirements or guidance as well as borrower financial records.⁴⁴⁷

2. FTE Reduction Safe Harbor 2—Reversals of FTE Employee Reductions

A second safe harbor rule provides that loan forgiveness reductions based on a reduction in FTE employees will not be taken if the employer reduced its FTE employee levels between February 15, 2020, and April 26, 2020, and the employer reversed the reductions by the last day of the covered period.⁴⁴⁸

V. Loan Forgiveness Applications—Four Options Available

A borrower must submit the loan forgiveness application to the lender that is servicing the borrower's loan.⁴⁴⁹ There are currently three versions of SBA's loan forgiveness application available, depending on the borrower's circumstances. Each version is available on the SBA

⁴⁴³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291-8292 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021).

⁴⁴⁴ For a PPP loan made on or before December 27, 2020, the guidance must have been issued between March 1, 2020, and December 31, 2020. See Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021).

⁴⁴⁵ The requirements or guidance should come from the Department of Health and Human Services (HHS), the Centers for Disease Control (CDC), or the Occupational Safety and Health Administration (OSHA). Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021).

⁴⁴⁶ The rules explicitly say that local restrictions can meet this requirement because they are an indirect result of the federal guidance. PPP Interim Final Rule—Revisions to Loan Forgiveness, 85 Fed. Reg. 38,304, 38,309 (June 26, 2020). For an example of how this exemption works, see Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291 (February 5, 2021).

⁴⁴⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8291 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 8 (January 19, 2021).

⁴⁴⁸ For PPP loans made before December 27, 2020, the reductions must have been reversed by December 13, 2020. See Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8292 (February 5, 2021); Loan Forgiveness Application Form 3508 Instructions for Borrowers, page 6 (January 19, 2021).

⁴⁴⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8287 (February 5, 2021); First Draw PPP Rule, 86 Fed. Reg. 3692, 3703 (January 14, 2021).

website.⁴⁵⁰ It is also possible that a borrower's lender will have its own forgiveness application for the borrower to use.

Each PPP loan requires a separate loan forgiveness applications.⁴⁵¹ Therefore, if a borrower that has both a first draw and second draw PPP loan, the borrower will need to submit two separate loan forgiveness applications.

A. Standard PPP Loan Forgiveness Application—SBA Form 3508

The standard loan forgiveness application is SBA Form 3508, which requires the most detail from the borrower.⁴⁵²

B. Simplified PPP Loan Forgiveness Application—SBA Form 3508EZ

A second version of the loan forgiveness application, what SBA is calling the “Paycheck Protection Program EZ Loan Forgiveness Application,” is a simplified application for those borrowers that meet certain requirements.⁴⁵³ This is known as SBA Form 3508EZ.

In order to apply for forgiveness using the PPP EZ Loan Forgiveness Application, the PPP loan amount must be greater than 150,000 dollars, and the borrower must qualify for full loan forgiveness. This means that at least one of the following must be true: (1) the borrower did not reduce the hourly wages or annual salary of any employee by more than 25 percent during the covered period (when compared to the most recent full quarter prior to the covered period), and did not reduce the number of employees or their average hours between January 1, 2020, and the end of the covered period; or (2) the borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020, and the end of the covered period.⁴⁵⁴

C. Loan Forgiveness Application for Loans of \$150,000 or less—SBA Form 3508S

A third version of the loan forgiveness application, what SBA is calling Form 3508S, is for borrowers who received either a first draw or second draw PPP loan of 150,000 dollars or less.⁴⁵⁵ Borrowers who receive a PPP loan of 150,000 dollars or less should use the Form 3508S application.⁴⁵⁶

⁴⁵⁰ SBA, PPP Loan Forgiveness, How and When to Apply for Loan Forgiveness, at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-loan-forgiveness>.

⁴⁵¹ See, for example, PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 1 (January 19, 2021).

⁴⁵² PPP Loan Forgiveness Application Form 3508 (January 19, 2021), at: <https://www.sba.gov/document/sba-form-3508-paycheck-protection-program-loan-forgiveness-application>.

⁴⁵³ See PPP Loan Forgiveness Application Form 3508EZ (January 19, 2021), at: <https://www.sba.gov/document/sba-form-3508ez-paycheck-protection-program-ez-loan-forgiveness-application>.

⁴⁵⁴ See PPP Loan Forgiveness Application Form 3508EZ Instructions for Borrowers, Page 1 (January 19, 2021).

⁴⁵⁵ See PPP Loan Forgiveness Application Form 3508S, Page 1 (January 19, 2021), at: <https://www.sba.gov/document/sba-form-3508s-ppp-loan-forgiveness-form-3508s>.

⁴⁵⁶ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021).

As a general rule, borrowers using the Form 3508S loan forgiveness application cannot be required to submit any additional documentation beyond the application's certification.⁴⁵⁷ However, if a borrower of a second draw PPP loan did not submit evidence of the required revenue reduction when the borrower applied for the loan, the borrower must provide such documentation either before or at the same time as when the loan forgiveness application is submitted.

D. Lender Equivalent Loan Forgiveness Application

Lenders may also create their own PPP loan forgiveness applications that mirror the standard or EZ loan forgiveness applications.⁴⁵⁸

VI. Documentation Requirements for PPP Loan Forgiveness

Under the rules for PPP loan forgiveness, there are certain documents that borrowers must submit with their loan forgiveness application, as well as additional documents that borrowers must keep on hand.⁴⁵⁹ Borrowers can submit more documentation if they choose. If all required documentation is not submitted, the borrower will not receive any forgiveness.⁴⁶⁰ In addition, all borrowers must allow representatives of SBA, including the Office of Inspector General, access to their PPP documentation upon request.⁴⁶¹

Whether a borrower will need to submit or keep specific documentation depends, in part, on which loan forgiveness application the borrower is submitting—Form 3508, Form 3508EZ, or Form 3508S. The sections below describe the documentation requirements for PPP loan forgiveness. These requirements apply equally to first draw and second draw PPP loan borrowers, with only one difference for some second draw PPP loan borrowers. That difference is explained below.

A. Documentation of Payroll or Self-Employment Income

All borrowers applying for PPP loan forgiveness—whether using Form 3508, Form 3508EZ, or Form 3508S—will need to have specific payroll or self-employment compensation documentation. As explained below, only borrowers using Form 3508 or 3508EZ will need to submit such documentation, but all borrowers must keep the documentation in their records.

1. Required Payroll Documentation

For borrowers with employees, payroll documentation is documentation that demonstrates the eligible cash compensation and non-cash benefit payments made to

⁴⁵⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021).

⁴⁵⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294 (February 5, 2021). See also SBA, PPP Loan Forgiveness, How and When to Apply for Loan Forgiveness, at: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-loan-forgiveness>.

⁴⁵⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293-8294 (February 5, 2021).

⁴⁶⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8296 (February 5, 2021).

⁴⁶¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294 (February 5, 2021); PPP Loan Forgiveness Application, Form 3508, Instructions for Borrowers, page 8 (January 19, 2021); PPP Loan Forgiveness Application, Form 3508EZ, Instructions for Borrowers, page 5 (January 19, 2021); PPP Loan Forgiveness Application, Form 3508S, Instructions for Borrowers, page 4 (January 19, 2021).

employees during the covered period.⁴⁶² This documentation must include the following: (1) bank account statements or third-party payroll service provider reports that show the amount of cash compensation paid to employees; (2) tax forms for the periods that overlap with the covered period, including payroll tax filings (typically IRS Form 941) and state quarterly business and individual employee wage reporting and unemployment insurance tax filings—third-party payroll service provider equivalents of the tax forms are allowed; (3) payment receipts, cancelled checks, or account statements showing the amount of any employer contributions to group health, life, disability, dental, or vision coverage, as well as retirement plans, that the borrower is including in the requested PPP loan forgiveness amount.⁴⁶³

2. Required Self-Employment Income Documentation

For self-employed borrowers, documentation to support their self-employment income must be submitted.⁴⁶⁴ This includes submitting the 2019 or 2020 IRS Form 1040 Schedule C or Schedule F that was used when determining the borrower's PPP loan amount.

3. Requirements for Submitting and Keeping Payroll Documents

Borrowers using either the standard PPP loan forgiveness application, Form 3508, or the Form 3508EZ forgiveness application must submit the required payroll documentation with their loan forgiveness applications.⁴⁶⁵ In addition, borrowers must keep all payroll documentation for a period of six years after the date on which the loan is forgiven or repaid in full.⁴⁶⁶

Borrowers using the loan forgiveness application Form 3508S, for PPP loans of 150,000 dollars or less, must keep the required payroll documentation.⁴⁶⁷ Payroll documentation must be kept for a period of four years after the date on which the loan forgiveness application is submitted to the lender. This is true even though the information did not need to be submitted at the time of the application.

B. Documentation of Non-Payroll Expenses

All borrowers applying for PPP loan forgiveness—whether using Form 3508, Form 3508EZ, or Form 3508S—will need documentation to demonstrate their qualifying non-

⁴⁶² Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021); CARES Act § 1106(e)(1) (March 27, 2020).

⁴⁶³ The relevant contributions to coverage and retirement plans should come from the PPP Loan Forgiveness Application Schedule A, lines 6 and 7. See PPP Loan Forgiveness Application, Form 3508, page 3 (January 19, 2021).

⁴⁶⁴ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,154 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021).

⁴⁶⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application, Form 3508, Instructions for Borrowers, page 7 (January 19, 2021); PPP Loan Forgiveness Application, Form 3508EZ, Instructions for Borrowers, page 4 (January 19, 2021).

⁴⁶⁶ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294 (February 5, 2021); PPP Loan Forgiveness Application, Form 3508, Instructions for Borrowers, page 8 (January 19, 2021); PPP Loan Forgiveness Application, Form 3508EZ, Instructions for Borrowers, page 5 (January 19, 2021).

⁴⁶⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294 (February 5, 2021); PPP Loan Forgiveness Application, Form 3508S, Instructions for Borrowers, page 4 (January 19, 2021).

payroll expenses that are eligible for PPP loan forgiveness.⁴⁶⁸ As explained below, only borrowers using Form 3508 or Form 3508EZ will need to actually submit the non-payroll documentation, but all borrowers must keep the documentation in their possession.

1. Non-Payroll Documentation Defined

The types of documents that are required to evidence non-payroll expenses are described in the sections that follow.

a. Documenting Business Mortgage Interest Payments

To show eligible business mortgage interest payments, borrowers must provide either copies of lender amortization schedules and receipts or cancelled checks from the covered period or lender account statements showing interest and eligible payments from February 2020 and the months of the covered period through one month after the end of that period.⁴⁶⁹ The documentation must also verify that the mortgage interest obligation was incurred prior to February 15, 2020.

b. Documenting Business Rent or Lease Payments

To show eligible business rent or lease payments, borrowers must provide either a copy of their current lease agreement and receipts or cancelled checks from the covered period, or lessor account statements from February 2020 and the months of the covered period through one month after the end of that period.⁴⁷⁰ The documentation must also verify that the rent or lease obligation was incurred prior to February 15, 2020.

c. Documenting Business Utility Payments

To show eligible business utility payments, borrowers must provide copies of invoices from February 2020 and any payments made during the covered period, as well as receipts, cancelled checks, or account statements verifying those payments.⁴⁷¹ The documentation must also verify that the utility services began prior to February 15, 2020.

d. Documenting Covered Operations Expenditures

To show eligible covered operations expenditures, borrowers must provide copies of invoices, orders, or purchase orders paid during the covered period, as well as receipts, cancelled checks, or account statements verifying those eligible payments.⁴⁷²

⁴⁶⁸ Amended PPP Loan Calculation Rule, 86 Fed. Reg. 13,149, 13,154 (March 8, 2021); Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁶⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁷⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁷¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁷² Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

e. Documenting Covered Property Damage Costs

To show eligible covered property damage costs, borrowers must submit copies of invoices, orders, or purchase orders paid during the covered period, as well as receipts, cancelled checks, or account statements verifying those eligible payments.⁴⁷³ In addition, borrowers must provide documentation that the costs were related to property damage and vandalism or looting due to public disturbances that occurred during 2020, and the costs were not covered by insurance or other compensation.

f. Documenting Covered Supplier Costs

To show eligible covered supplier costs, borrowers must provide copies of contracts, orders, or purchase orders in effect at any time before the covered period (except for perishable goods), as well as copies of invoices, orders, or purchase orders paid during the covered period.⁴⁷⁴ Borrowers must also submit receipts, cancelled checks, or account statements verifying those eligible payments.

g. Documenting Covered Worker Protection Expenditures

To show eligible covered worker protection expenditures, borrowers must submit copies of invoices, orders, or purchase orders paid during the covered period, as well as receipts, cancelled checks, or account statements verifying those eligible payments.⁴⁷⁵ Borrowers must also provide documentation that the expenditures were used by the borrower to comply with applicable COVID-19 guidance during the covered period.

2. Requirements for Submitting and Retaining Non-Payroll Documentation

Borrowers using either the standard PPP loan forgiveness application, Form 3508, or the Form 3508EZ forgiveness application, must submit the required non-payroll documentation with their loan forgiveness applications.⁴⁷⁶ In addition, borrowers must keep all non-payroll documentation for a period of six years after the date on which the loan is forgiven or repaid in full.⁴⁷⁷

Borrowers using the loan forgiveness application Form 3508S, for PPP loans of 150,000 dollars or less, must keep their non-payroll documentation.⁴⁷⁸ Non-payroll documentation must be kept for a period of three years after the date on which the loan

⁴⁷³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁷⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁷⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁷⁶ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application, Form 3508, Instructions for Borrowers, page 7 (January 19, 2021); PPP Loan Forgiveness Application, Form 3508EZ, Instructions for Borrowers, page 4 (January 19, 2021).

⁴⁷⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294 (February 5, 2021); PPP Loan Forgiveness Application, Form 3508, Instructions for Borrowers, page 8 (January 19, 2021); PPP Loan Forgiveness Application, Form 3508EZ, Instructions for Borrowers, page 5 (January 19, 2021).

⁴⁷⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294 (February 5, 2021); PPP Loan Forgiveness Application, Form 3508S, Instructions for Borrowers, page 4 (January 19, 2021).

forgiveness application is submitted to the lender. This is true even though the documentation did not need to be submitted at the time of the application.

C. Additional Documentation Requirements for Standard Form 3508

Borrowers submitting the standard Form 3508 loan forgiveness application have additional requirements for documents that must be submitted as well as retained.

1. Must Submit FTE Employee Numbers

For borrowers that submit the standard loan forgiveness application, documentation establishing full-time equivalent (FTE) employee numbers must also be submitted.⁴⁷⁹ This documentation may include reported payroll tax filings (usually IRS Form 941), and the borrower's state quarterly business and individual employee wage reporting and unemployment insurance tax filings that were or will be reported.⁴⁸⁰

Borrowers have a choice as to the specific time period for which they provide documentation. The selected time period must be the same time period using for purposes of completing PPP Schedule A, line 11.

Employers with year-round operations can select between the following time periods: (1) the average number of FTE employees on payroll per week between February 15, 2019, and June 30, 2019; or (2) the average number of FTE employees on payroll per week between January 1, 2020, and February 20, 2020.⁴⁸¹

For seasonal employers, they can choose to document the average number of FTE employees on payroll between: (1) February 15, 2019 and June 30, 2019; (2) January 1, 2020, and February 29, 2020; or (3) any consecutive twelve-week period between February 15, 2019, and February 15, 2020.⁴⁸²

Borrowers using Form 3508 must keep all FTE documentation for a period of six years after the date on which the loan is forgiven or repaid in full.⁴⁸³

2. Documentation to Keep

For borrowers that submit the standard loan forgiveness application, borrowers must keep their PPP loan forgiveness documentation, including the PPP Loan Forgiveness Application Schedule A Worksheet, for six years after the date on which the PPP loan is either forgiven or repaid in full.⁴⁸⁴ Borrowers must also keep documentation used to support any of the loan forgiveness reduction exemptions or safe harbor rules.

⁴⁷⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8293 (February 5, 2021); PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021); CARES Act § 1106(e)(1) (March 27, 2020).

⁴⁸⁰ PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁸¹ PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁸² PPP Loan Forgiveness Application Form 3508, Instructions for Borrowers, page 7 (January 19, 2021).

⁴⁸³ PPP Loan Forgiveness Application, Form 3508, Instructions for Borrowers, page 8 (January 19, 2021).

⁴⁸⁴ PPP Loan Forgiveness Application, Form 3508, Instructions for Borrowers, pages 7-8 (January 19, 2021).

D. Additional Documentation Requirements for Form 3508EZ

Borrowers submitting the Form 3508EZ as their loan forgiveness application must keep various documents for six years after the date on which their PPP loan is either forgiven or repaid in full.⁴⁸⁵ This includes documentation used to support any of the loan forgiveness reduction exemptions or safe harbor rules, as well as all documentation submitted with the PPP loan application and documentation that demonstrates the borrower's compliance with PPP rules.

E. Additional Documentation Requirement for Second Draw PPP Loans

For some borrowers with second draw PPP loans there is an additional documentation requirement. If a second draw borrower has a PPP loan with a principal amount of 150,000 dollars or less, documentation of revenue reduction must be provided with the loan forgiveness application if it was not provided at the time of the original loan application.⁴⁸⁶

VII. Decisions on PPP Loan Forgiveness

In general, it is the borrower's lender that will decide whether the borrower is entitled to PPP loan forgiveness, but SBA who ultimately provides the loan forgiveness funds.⁴⁸⁷

A. Lender Must Confirm Receipt of Application and Documentation

When a borrower submits a completed standard or EZ loan forgiveness application, or the lender's equivalent, the lender must confirm receipt of both the borrower's application as well as the borrower's submitted documentation in support of payroll and non-payroll costs.⁴⁸⁸ The lender must also confirm that the borrower's calculations on the applications are correct.

When a borrower submits a completed Form 3508S loan forgiveness application, or the lender's equivalent, the lender must confirm receipt of the borrower's certifications on the application.⁴⁸⁹ If a borrower is using Form 3508S for forgiveness of a second draw loan, and the borrower did not previously provide documentation of revenue reduction with its second draw PPP loan application, the lender must also confirm the dollar amount and percentage of the borrower's revenue reduction.

B. Lender Has Sixty Days to Make a Decision on Loan Forgiveness

Following receipt of a completed loan forgiveness application, the lender has sixty days within which to notify SBA of the lender's decision regarding forgiveness.⁴⁹⁰ The lender's

⁴⁸⁵ PPP Loan Forgiveness Application, Form 3508EZ, Instructions for Borrowers, pages 4-5 (January 19, 2021).

⁴⁸⁶ Second Draw PPP Rule, 86 Fed. Reg. 3712, 3722 (January 14, 2021).

⁴⁸⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021).

⁴⁸⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8295 (February 5, 2021).

⁴⁸⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8296 (February 5, 2021).

⁴⁹⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288, 8296 (February 5, 2021). If SBA has any questions regarding the eligibility of a borrower for the requested loan forgiveness amount, SBA will require the lender contact the borrower in writing and request additional information, or SBA

decision can conclude one of three things.⁴⁹¹ First, the lender can decide to approve the borrower's PPP loan forgiveness application, either in whole or in part. Second, the lender can deny the borrower's loan forgiveness application. Or, third, the lender can deny the application without prejudice because there is a pending SBA review of the PPP loan for which forgiveness is being sought.⁴⁹² Without prejudice, in this case, means that even though the lender made a denial, the real decision on loan forgiveness is in the hands of SBA.

C. SBA Has Ninety Days to Provide Forgiveness Funds

If the lender determines that the borrower is entitled to some or all loan forgiveness, the lender must request the forgivable amount from SBA at the time it notifies SBA of its decision.⁴⁹³ SBA then has ninety days, from the date the lender issued its decision to SBA, within which to remit the forgiveness amount, plus any accrued interest, to the lender who will then provide the money to the borrower.

D. Lender Must Inform Borrower of Loan Forgiveness Decision

The lender must inform the borrower of its decision as to the amount of loan forgiveness the borrower is eligible to receive.⁴⁹⁴ If only a portion of the original PPP loan is determined to be forgivable, the borrower is responsible for repaying the remainder of the loan within the five-year maturity timeframe for the loan.

E. Borrower Has Right to Request SBA Review if Forgiveness is Denied

If the lender denies the loan forgiveness application, the lender must notify the borrower in writing of that decision.⁴⁹⁵ The written notice must include the lender's reasons for denying loan forgiveness, and it must also inform the borrower that the borrower has thirty calendar days from receipt of the notification to seek SBA review of the lender's decision. A borrower who wants SBA to review its lender's loan forgiveness denial must first notify their lender that they would like an SBA review, and the lender will then notify SBA of the request.

It is important to note that the only way to formally appeal a denial of PPP loan forgiveness is if SBA has first conducted a review of the lender's denial.⁴⁹⁶ In other words, if a borrower is denied loan forgiveness and does not request an SBA review, the borrower will not be able to later appeal the denial. Appeals of PPP loans are discussed later in this Guide.

may contact the borrower directly for that information. Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8295 (February 5, 2021).

⁴⁹¹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8296 (February 5, 2021).

⁴⁹² If a loan forgiveness application is denied without prejudice, the borrower can request that the lender reconsider the application, so long as SBA does not conclude that the borrower is ineligible for a PPP loan. Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8296 (February 5, 2021).

⁴⁹³ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021).

⁴⁹⁴ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8288 (February 5, 2021).

⁴⁹⁵ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8297 (February 5, 2021).

⁴⁹⁶ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020); 13 C.F.R. § 134.1203 (2021).

F. SBA Has the Right to Review a Borrower's Compliance with All PPP Rules

SBA reserves the right to review whether a borrower has complied with all of the required PPP rules, including those for borrower eligibility, loan amounts and uses of the loan funds, as well as loan forgiveness.⁴⁹⁷ SBA may review a borrower's first draw PPP loan and second draw PPP loan at the same time, or at different times.⁴⁹⁸ SBA may conduct such a review at any time. However, SBA has determined that it will review all loans in excess of two million dollars after the lender submits the borrower's loan forgiveness application.⁴⁹⁹

If SBA conducts a review of a borrower's PPP loan, SBA must notify the borrower's lender in writing, and the lender must in turn notify the borrower in writing within five business days.⁵⁰⁰

VIII. Tax Implications of PPP Loan Forgiveness

The federal income tax consequences of PPP loans are confusing, and have changed over time.

In general, according to the IRS, debt forgiveness is taxable.⁵⁰¹ There are some exceptions, including some exceptions specifically for farmers.⁵⁰² The CARES Act, however, made PPP loan forgiveness not taxable under federal income tax laws.⁵⁰³

Although PPP loan forgiveness is not taxable under federal income tax laws, the rules regarding whether certain business expenses are deductible have changed over time. Previously, the IRS issued a notice stating that any business that receives a PPP loan would not be able to write off expenses paid with any forgiven portion of the loan, even if those expenses would otherwise be deductible.⁵⁰⁴ This meant that businesses that typically get deductions for expenses like salaries and wages may not be able to take those deductions if their PPP loan is forgiven.⁵⁰⁵ This rule changed, however, with the passing of the Economic Aid Act on December 27, 2020. Now,

⁴⁹⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294 (February 5, 2021).

⁴⁹⁸ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294, 8297 (February 5, 2021).

⁴⁹⁹ SBA and Treasury Department, PPP FAQs, Question 39 (March 12, 2021).

⁵⁰⁰ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8297 (February 5, 2021).

⁵⁰¹ See IRS, Topic No. 431 Canceled Debt – Is It Taxable or Not, (May 27, 2020). at <https://www.irs.gov/taxtopics/tc431>; IRS, Canceled Debts, Foreclosures, Repossession, and Abandonments (for Individuals), Pub. 4681 (Feb. 7, 2020), at <https://www.irs.gov/pub/irs-pdf/p4681.pdf>.

⁵⁰² See IRS, Canceled Debts, Pub. 4681, at 7-8 (Feb. 7, 2020).

⁵⁰³ CARES Act § 1106(i) (March 27, 2020). This rule only applies to federal income tax—state tax laws may differ.

⁵⁰⁴ Internal Revenue Service, Notice 2020-32, page 6, at: <https://www.irs.gov/pub/irs-drop/n-20-32.pdf>.

⁵⁰⁵ For journalism on the tax implications of PPP, see Kimberly Gilreath et al, Tax Effects of PPP Loan Forgiveness—IRS Notice 2020-32 (May 5, 2020), at: <https://www.jdsupra.com/legalnews/tax-effects-of-ppp-loan-forgiveness-irs-72682/>; Sally P. Schreiber, AIPA Challenging Deductibility of PPP Related Expenses, Journal of Accountancy (May 1, 2020), at <https://www.journalofaccountancy.com/news/2020/may/expenses-reimbursed-by-ppp-not-tax-deductible-paycheck-protection-program.html>; Wilson Elser, Paycheck Protection Program: Certain Issues Involving Loan Forgiveness, The National Law Review (May 15, 2020), at <https://www.natlawreview.com/article/paycheck-protection-program-certain-tax-issues-involving-loan-forgiveness>.

following the Economic Aid Act, borrowers that use PPP loan funds for expenses that would otherwise qualify as tax-deductible business expenses may deduct those business expenses, even if the PPP loan is forgiven.⁵⁰⁶

⁵⁰⁶ Economic Aid Act § 276 (December 27, 2020).

Chapter Seven: Appeals of PPP Loan and Loan Forgiveness Decisions

If SBA ultimately determines that a borrower is ineligible for a PPP loan, or for loan forgiveness, the borrower may appeal SBA's decision to the SBA Office of Hearings and Appeals (OHA).⁵⁰⁷ The process, however, involves many rules and steps that must be followed closely.

In many ways, the appeals process that SBA has created for PPP resembles what it is like to go to court. This means there are strict deadlines on when an appeal must be filed, what must be submitted, and how arguments must be made.

I. Appealable Decisions

Only certain types of PPP loan decisions are appealable. A borrower may only appeal written decisions by SBA, and only after SBA has completed a review of the borrower's PPP loan.⁵⁰⁸ In other words, a borrower cannot appeal a decision made by a lender regarding their PPP loan.

A. When and How SBA Conducts PPP Loan Reviews

SBA may review, at any time and at its discretion, a borrower's eligibility for PPP, a borrower's loan amount and use of PPP funds, as well as any forgiveness amounts.⁵⁰⁹

B. Four Types of Appealable Decisions

There are four types of SBA decisions that are appealable.⁵¹⁰ First, a borrower can appeal an SBA decision that the borrower was ineligible for a PPP loan. Second, a borrower can appeal an SBA decision finding that the borrower was ineligible for the loan amount the borrower received, or that the borrower used PPP loan funds in an unauthorized way. Third, if a lender only approves a borrower for partial PPP loan forgiveness, the borrower can appeal an SBA decision finding that the borrower was ineligible for that partial forgiveness. Finally, if a lender fully denies a borrower PPP loan forgiveness, the borrower may appeal an SBA decision finding that the borrower was ineligible for loan forgiveness.

II. Who May Appeal

Two important rules limit access to an appeal.

⁵⁰⁷ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8295 (February 5, 2021); Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program (PPP Appeals Rule), 85 Fed. Reg. 52,883 (August 27, 2020) (to be codified at 13 C.F.R. pt. 134).

⁵⁰⁸ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,887 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1201(b)).

⁵⁰⁹ Amended PPP Loan Forgiveness Rule, 86 Fed. Reg. 8283, 8294 (February 5, 2021); PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,884 (August 27, 2020).

⁵¹⁰ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,887 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1201(b)).

A. Borrower Only

Only the borrower of a PPP loan may appeal an SBA loan review decision of a PPP loan.⁵¹¹ This means that lenders cannot appeal an SBA loan review decision, and neither can individual owners of a borrower.⁵¹²

B. SBA Official Decisions Only

Only official SBA written decisions can be appealed.⁵¹³ A written SBA decision will only come after SBA completes a review of the loan. A lender decision, to put it differently, cannot be appealed if there is not an SBA review and written decision.⁵¹⁴

SBA decides when and if it reviews a loan decision and issues a written decision on the loan.⁵¹⁵ The borrower may ask SBA to review a lender's decision. This, however, is only a request for a review, and will not count as an appeal. It is not clear whether a borrower's request for an SBA review must result in any SBA action.⁵¹⁶

III. Timeline for Filing an Appeal Petition—Thirty Days

A borrower must file an appeal petition with OHA no later than thirty calendar days after when the borrower receives the final PPP loan decision, or when the lender notifies the borrower of SBA's loan review decision, whichever is earlier.⁵¹⁷ When calculating the thirty calendar days, a borrower should not count the day on which the time period begins. In addition, if the last day is a Saturday, Sunday, or a Federal holiday, the time period should end on the next business day.⁵¹⁸ SBA considers the date of filing to be the date that SBA actually receives the petition.⁵¹⁹

IV. How to File an Appeal Petition

The appeal petition must be filed with OHA by mail, email, or fax.⁵²⁰

⁵¹¹ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1203).

⁵¹² PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,885 (August 27, 2020).

⁵¹³ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,884, 52,887, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. §§ 134.1201(b), 134.1202(a)(2), 134.1203).

⁵¹⁴ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,887 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1201(c)).

⁵¹⁵ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,884 (August 27, 2020).

⁵¹⁶ SBA, Interim Final Rule, Business Loan Program Temporary Changes; Paycheck Protection Program—SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, 85 Fed. Reg. 33,010, 33,013 (June 1, 2020). This rule, for example, says that a borrower may request an SBA review of a lender's determination that the borrower is not eligible, but it does not directly say that SBA must grant such a review when it is requested.

⁵¹⁷ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1204).

⁵¹⁸ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202(g)).

⁵¹⁹ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202(c)); 13 C.F.R. § 134.204(b) (2021).

⁵²⁰ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202(c)); 13 C.F.R. § 134.204(a) (2021). The petition may be emailed to OHA at: OHAFilings@sba.gov. The petition may also be faxed to OHA at: (202) 205-7059. Alternatively, the petition may be mailed to:

Office of Hearings and Appeals

In addition, a copy of the petition, including any attachments, must also be sent to the Associate General Counsel for Litigation at SBA.⁵²¹ SBA provides a mailing address and email address for the Associate General Counsel for Litigation.⁵²²

V. Requirements of Appeal Petition

In order to appeal an SBA loan decision, the appeal petition must meet certain requirements for its contents and format. If all of the following requirements are not met the petition may be dismissed.⁵²³

A. Required Content of the Appeal Petition

An appeal petition filed with OHA must contain the following information: (1) evidence that the appeal was filed within the required timeframe; (2) a copy of the SBA loan review decision that the borrower is appealing;⁵²⁴ (3) a full and specific statement—including all relevant facts and legal arguments—describing why the borrower believes SBA's loan review decision is erroneous; (4) the relief that the borrow is seeking; and (5) the name, address, telephone number, email address, and signature of the borrower or their attorney.⁵²⁵

In addition, if the borrower did not submit the following with their PPP loan application, the following must be submitted with the appeal petition: (1) copies of the borrower's payroll taxes that were filed with the IRS, and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported to the state; and (2) the borrower's signed tax returns, as filed with the IRS, that document income for self-employed borrowers or borrowers in a partnership (including any applicable Schedule C or Schedule F).⁵²⁶

U.S. Small Business Administration
409 Third Street, SW.
Washington, DC 20416.

⁵²¹ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202(c)).

⁵²² The email address for the Associate General Counsel for Litigation is: OLITService@sba.gov. The address for Associate General Counsel for Litigation is:

Associate General Counsel for Litigation
U.S. Small Business Administration
409 Third Street SW
Washington, D.C. 20416.

⁵²³ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202(e)).

⁵²⁴ If the borrower does not have access to a copy of the decision, the borrower must provide a description of the decision. PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202).

⁵²⁵ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202).

⁵²⁶ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202).

B. Required Format of Appeal Petition

The appeal petition cannot be longer than twenty pages, not including any attachments.⁵²⁷ If a PPP borrower wishes to submit an appeal that is longer than twenty pages, they must first get approval from the Judge.

C. Proof that Petition was Delivered

In addition to the petition itself, and any attachments, an appeal must also include what is called a “certificate of service,” which is a document that certifies where, when, and how the petition was filed.⁵²⁸

A correct certificate of service requires that the person filing the appeal include a document that says the following:

I certify that on [date], I served the foregoing [type of submission] by [e-mail, mail, Express Mail, personal delivery, commercial delivery service, facsimile] upon the following.

The document must then list the name and address of each person who was sent the petition. Finally, the person filing the appeal must sign the document and print or type their name.

VI. Decision on the Appeal

Once OHA receives an appeal petition, it will assign the matter to either an Administrative Law Judge or an Administrative Judge.⁵²⁹ After the matter is assigned to a Judge, the Judge will issue an order that provides a timeline for SBA to file what is called the “administrative record,” which includes the relevant documents that SBA used when making its loan decision.⁵³⁰ SBA will then have twenty calendar days after the Judge issues to order to file the record and also to send a copy to the person who filed the appeal.⁵³¹ In general, the Judge will not accept any additional documents once forty-five calendar days have passed following when OHA received the appeal petition.⁵³² It is at this point that the Judge will consider all of the evidence and begin to make a decision on the appeal. The Judge will then have an additional forty-five calendar days during which to make a decision.⁵³³ It is possible to request a review or reconsideration of the

⁵²⁷ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202(b)). If the borrower references more than twenty cases, regulations, or statutes in their appeal petition, the petition must also include a table of authorities.

⁵²⁸ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1202(d)); 13 C.F.R. § 134.204(d) (2021).

⁵²⁹ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1206).

⁵³⁰ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. §§ 134.1206, 134.1207).

⁵³¹ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1206).

⁵³² PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1206).

⁵³³ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,889 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1213).

Judge's decision.⁵³⁴ If no such request is made, the decision becomes final thirty calendar days after notification of the decision is made.⁵³⁵

Unless the Judge allows otherwise, the decision of the Judge will be based on the petition and the administrative record.⁵³⁶ In some cases the Judge may allow an oral hearing, but that is likely uncommon.

VII. Alternative Dispute Resolution (ADR)

Instead of having the Judge decide the appeal, at any point during the appeals process the parties to the appeal may submit a joint request to the Judge asking that they be allowed to instead use alternative dispute resolution (ADR) to resolve the matter.⁵³⁷

⁵³⁴ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,889 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1213). For details on how to request a review or reconsideration, see PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,889 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1213); 13 C.F.R. § 134.228(a) (2021).

⁵³⁴ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,889 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1213).

⁵³⁴ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,889 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1213).

⁵³⁵ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,889 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1213).

⁵³⁶ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,888 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1209).

⁵³⁷ PPP Appeals Rule, 85 Fed. Reg. 52,883, 52,889 (August 27, 2020) (to be codified at 13 C.F.R. § 134.1211).

Chapter Eight: Discrimination in PPP

Little thought appears to have been given to the possibility that the PPP might be implemented in a discriminatory way, or to how that discrimination might be prevented and remedied.⁵³⁸ The CARES Act, for example, does not give an indication of what anti-discrimination laws might apply to PPP. It is important to remember, though, that other laws make it illegal for the government or lenders to discriminate when administering these programs.⁵³⁹ The Equal Credit Protection Act (ECOA), for example, prohibits discrimination in credit transactions.⁵⁴⁰

⁵³⁸ One exception that concerns SBA programs is Congressional Research Service, Applicability of Federal Civil rights Laws to Recipients of CARES Act Loans, Legal Sidebar no. 10458 (May 1, 2020), at: <https://crsreports.congress.gov/product/pdf/LSB/LSB10459>.

⁵³⁹ For a summary of some of these laws, see Federal Trade Commission, Protections Against Discrimination and Other Prohibited Practices, at: <https://www.ftc.gov/site-information/no-fear-act/protections-against-discrimination>.

⁵⁴⁰ See 15 U.S.C. §§ 1691 to 1691f. For a thorough review see the National Consumer Law Center, Credit Discrimination (7th ed. 2018).