

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA-2021-0015]

RIN 3245-AH79

Business Loan Program Temporary Changes; Paycheck Protection Program – COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements changes related to the forgiveness of loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID-19), as amended. SBA has issued a number of interim final rules implementing the PPP Program. This interim final rule further streamlines the forgiveness process for PPP loans of \$150,000 or less by (a) allowing lenders to use a COVID Revenue Reduction Score at the time of forgiveness to document the required revenue reduction for Second Draw PPP Loans, and (b) establishing a direct borrower forgiveness process for lenders that choose to opt-in as an alternative method of processing loan forgiveness applications. This interim final rule also extends the loan deferment period for those PPP loans where the borrower timely files an appeal of a final SBA loan review decision with the SBA

Office of Hearings and Appeals.

DATES:

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

Applicability date: The COVID Revenue Reduction Score portion of this interim final rule applies to all Second Draw PPP Loans for which the lender has not yet issued a loan forgiveness decision to SBA as of the effective date of this rule. The direct borrower forgiveness process portion of this rule applies to all PPP loans for which a loan forgiveness application has not been submitted by the borrower to the lender as of the effective date of this rule. The deferment portion of the rule applies to PPP appeals filed after the effective date of this rule and to those PPP appeals filed before the effective date of this rule for which a Notice and Order has not been issued.

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

ADDRESSES: You may submit comments, identified by docket number SBA-2021-0015 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

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

final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833-572-0502 or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339. Individuals with disabilities can obtain this document in an accessible format that may be provided in Rich Text Format (RTF) or text format (txt), a thumb drive, an mp3 file, Braille, large print, audiotape, or compact disc, or other accessible formats.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116-136) was enacted to provide emergency assistance and health care response for individuals, families, and businesses affected by the Coronavirus Disease 2019 (COVID-19) pandemic. Section 1102 of the CARES Act temporarily permitted the Small Business Administration (SBA) to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program,” pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (First Draw PPP Loans). Section 1106 of the CARES Act provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). On April 24, 2020, the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116-139) was

enacted, which provided additional funding and authority for the PPP Program.

On June 5, the Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act) (Pub. L. 116-142) was enacted, which changed provisions of the PPP relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans. On July 4, 2020, Public Law 116-147 extended the authority to guarantee PPP loans to August 8, 2020.

On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) (Pub. L. 116-260) was enacted. The Economic Aid Act reauthorized lending under the PPP through March 31, 2021. The Economic Aid Act added a new temporary section 7(a)(37) to the Small Business Act, which authorizes SBA to guarantee additional PPP loans (Second Draw PPP Loans) to certain eligible borrowers that previously received a First Draw PPP Loan under generally the same terms and conditions available under section 7(a)(36) of the Small Business Act. Among other things, to be eligible for a Second Draw PPP Loan, the borrower must have experienced a revenue reduction of not less than 25% in at least one quarter of 2020 compared to the same quarter in 2019. The Economic Aid Act also redesignated section 1106 of the CARES Act as section 7A of the Small Business Act, to appear after section 7 of the Small Business Act. Additionally, the Economic Aid Act provided for a simplified forgiveness application process for PPP loans of \$150,000 or less.

On March 11, 2021, the American Rescue Plan Act (ARPA) (Pub. L. 117-2) was enacted, and among other things, expanded eligibility for First Draw PPP Loans and Second Draw PPP Loans and revised exclusions from payroll costs for

purposes of forgiveness. On March 30, 2021, the PPP Extension Act of 2021 (Pub. L. 117-6) was enacted, extending SBA's PPP program authority through June 30, 2021.

From April 3, 2020, through August 8, 2020, when the 2020 round of PPP expired, SBA guaranteed over 5.2 million PPP loans made by over 5,000 PPP lenders under delegated authority. From January 11, 2021, when the PPP reopened, through June 30, 2021, when the PPP program authority expired, SBA guaranteed over 6.6 million additional PPP loans. Thus, the total number of PPP loans guaranteed by SBA exceeds 11.8 million.¹ The total dollar amount of the PPP loans guaranteed by SBA exceeds \$806 billion.

SBA posted the first interim final rule implementing the PPP on SBA's website on April 2, 2020, and published the rule in the *Federal Register* on April 15, 2020 (85 FR 20811). SBA subsequently issued numerous additional interim final rules. On June 1, 2020, SBA published an interim final rule on loan forgiveness requirements (85 FR 33004) and an interim final rule on loan review procedures (85 FR 33010). Prior to the publication of the loan forgiveness and loan review interim final rules, on May 15, 2020, SBA issued SBA Form 3508, which was a loan forgiveness application to be used by all PPP borrowers.

On June 26, 2020, SBA published an interim final rule revising the loan forgiveness and loan review procedures to conform to the key forgiveness changes made by the PPP Flexibility Act (85 FR 38304). In conjunction with the rule, SBA

¹ By way of contrast, in a normal fiscal year, for example FY 2019, SBA guaranteed 51,907 7(a) loans. The astronomical increase in SBA's 7(a) portfolio, of which the PPP is a part, has strained SBA's resources and will continue to strain SBA's resources going forward.

issued a second loan forgiveness application form, SBA Form 3508EZ, which is a streamlined form that incorporates the forgiveness safe harbors established under the PPP Flexibility Act.

SBA's 2020 PPP program authority expired on August 8, 2020. On August 10, 2020, SBA began accepting PPP lender decisions on PPP borrower loan forgiveness applications through SBA's Paycheck Protection Platform (Platform) (forgiveness.sba.gov). PPP borrowers were required to submit their loan forgiveness applications to their PPP lenders, and as required by section 1106 of the CARES Act (now section 7A of the Small Business Act), lenders were required to issue a decision to SBA on the borrower's loan forgiveness application within 60 days of receipt of the application. On August 27, 2020, SBA issued an interim final rule on Appeals of SBA Loan Review Decisions under the Paycheck Protection Program (85 FR 52883). On October 2, 2020, SBA began remitting forgiveness payments to PPP lenders that submitted forgiveness decisions to SBA through the Platform. SBA continues to remit forgiveness payments to PPP lenders, and as of July 12, 2021, SBA has remitted over 4.3 million forgiveness payments to lenders.²

On October 19, 2020, in response to borrower and lender concerns about the complexity of the loan forgiveness process for the smallest of borrowers, SBA and the Department of the Treasury (Treasury) jointly issued an interim final rule revising the loan forgiveness and loan review procedures to simplify the forgiveness process for PPP loans of \$50,000 or less. Among other things, the rule exempted borrowers with loans of \$50,000 or less from the full-time equivalent

² As of July 12, 2021, SBA has received over 4.5 million forgiveness decisions from PPP lenders through the Platform.

employee (FTE) and salary/wage reduction penalties included in section 1106 of the CARES Act, under the joint SBA/Treasury statutory authority to make *de minimis* exemptions to those penalties. In conjunction with the rule, SBA issued a third loan forgiveness application, SBA Form 3508S, which was a further streamlined loan forgiveness application available for use by borrowers with loans of \$50,000 or less.

On January 14, 2021, SBA published interim final rules implementing the Economic Aid Act amendments to the PPP. The first interim final rule implemented Economic Aid Act changes to, among other things, PPP eligibility, and consolidated numerous prior interim final rules on PPP (86 FR 3692) (Consolidated Eligibility IFR). The second interim final rule implemented the Second Draw PPP Loan program authorized by the Economic Aid Act under section 7(a)(37) of the Small Business Act (86 FR 3712) (Second Draw IFR). On February 5, 2021, SBA published a third interim final rule implementing Economic Aid Act changes related to the forgiveness and review of PPP loans (86 FR 8283) (Consolidated Forgiveness and Loan Review IFR). Among other things, the Consolidated Forgiveness and Loan Review IFR implemented the simplified forgiveness application process for loans of \$150,000 or less required by the Economic Aid Act. In conjunction with this rule, on January 19, 2021, SBA issued a revised SBA Form 3508S, which increased the loan amount for which the form could be used from \$50,000 to \$150,000.³ The new SBA Form 3508S was also shortened to one page,

³ Although borrowers with loans of \$150,000 or less may now use SBA Form 3508S, only those borrowers with loans of \$50,000 or less may use the *de minimis* exemption from the FTE and salary/wage reduction penalty.

as required by the Economic Aid Act, and no longer requires the submission of supporting forgiveness documentation, as mandated by the Economic Aid Act.

Following the publication of the interim final rules implementing the Economic Aid Act, SBA published another interim final rule on March 8, 2021, revising certain loan amount calculation and eligibility provisions for PPP (86 FR 13149). On March 22, 2021, SBA published an interim final rule implementing the PPP provisions of ARPA (86 FR 15083).

As described below, this interim final rule further streamlines the forgiveness process for PPP loans of \$150,000 or less by (a) allowing lenders to use a COVID Revenue Reduction Score at the time of loan forgiveness to document the required revenue reduction for Second Draw PPP loans of \$150,000 or less, and (b) establishing a direct borrower forgiveness process for lenders that choose to opt-in as an alternative method of processing loan forgiveness applications for PPP Loans of \$150,000 or less. This interim final rule also extends the loan deferment period for those PPP loans where the borrower timely files an appeal of a final SBA loan review decision with the SBA Office of Hearings and Appeals.

II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment because section 1114 of the CARES Act and section 303 of the Economic Aid Act authorize SBA to issue regulations to implement the Paycheck Protection Program without regard to notice requirements. Even otherwise, SBA finds good cause for setting aside the advance notice-and-public-comment procedure because that procedure would be impracticable and contrary to the public interest. The intent of the

CARES Act and the Economic Aid Act is to afford SBA the flexibility to provide relief to America's small businesses and nonprofit organizations expeditiously. Given the urgent need to provide borrowers with timely relief, the purpose of the rule is to minimize the burdens of the current loan forgiveness process that, without modification, could result in borrowers unnecessarily having to make principal and interest payments on loans that should be forgiven. If SBA were to follow the advance notice-and-public-comment process, that would delay issuance of the rule by at least three months. SBA understands—based on its expertise and consistent portfolio analysis—that a significant number of borrowers will have to apply for loan forgiveness in the next three months. Therefore, if the proposed rule is still undergoing notice and comment during that time, these borrowers will be applying under the current process, which (as noted above) would mean these borrowers could unnecessarily have to make principal and interest payments on loans that should be forgiven and would not be positively impacted by a later rule change. Providing for notice and comment would render the rule effectively moot and useless for millions of intended beneficiaries.

For these same reasons, SBA has determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date will allow SBA to expedite loan forgiveness to small businesses and nonprofit organizations and remit forgiveness payments to lenders.

This good cause justification also supports waiver of the 60-day delayed effective date for major rules under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) at 5 U.S.C.

808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule.

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

III. Paycheck Protection Program – COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment

Overview

A. Further Streamlining Forgiveness for PPP Loans of \$150,000 or Less

A key feature of the PPP is that a borrower may obtain forgiveness of up to the full amount of its PPP loan provided that the borrower complied with PPP requirements. Since SBA issued the first loan forgiveness application form (SBA Form 3508) in May 2020 and published the first loan forgiveness and loan review rules in June 2020, SBA has received comments from borrowers and lenders that the loan forgiveness process is overwhelming and difficult to manage and requesting simplification of the process. In response to borrower and lender requests for simplification of the loan forgiveness process, Congress enacted the PPP Flexibility Act in June 2020, which created safe harbors from the FTE and salary/wage reduction penalties of section 1106 of the CARES Act, and in response, SBA issued a new streamlined loan forgiveness application (SBA Form 3508EZ) implementing those changes.

In October 2020, SBA and Treasury exempted borrowers with loans of

\$50,000 or less from the FTE and salary/wage reduction penalties and issued a second new streamlined loan forgiveness application (SBA Form 3508S) implementing those changes. Borrowers and lenders continued to express concerns about the complexity of the loan forgiveness process, and in December 2020, Congress enacted the Economic Aid Act, which provides for a simplified loan forgiveness application process for borrowers with loans of \$150,000 or less. SBA implemented this requirement by revising the second streamlined loan forgiveness application (SBA Form 3508S) to allow all borrowers with loans of \$150,000 or less to use the form.

Loans of \$150,000 or less represent 93 percent of the outstanding PPP loans. Despite the implementation of the streamlined loan forgiveness application for borrowers with loans of \$150,000 or less, many smaller PPP lenders continue to express concerns to SBA that they do not have the technology or human resources to develop efficient electronic loan forgiveness platforms to process the new streamlined loan forgiveness application.⁴ SBA has also become aware that because lenders are overwhelmed by the volume of PPP loans and are mindful of the statutory 60-day requirement for lenders to issue a forgiveness decision to SBA from receipt of the borrower's loan forgiveness application, lenders are limiting when loan forgiveness applications are accepted from borrowers, creating uncertainty among borrowers that they are going to have to start making payments on their PPP loans while they are waiting for their lenders to accept and process their loan forgiveness applications.

⁴ Borrowers may submit and lenders may accept paper versions of loan forgiveness applications, but given the volume of PPP loans made by lenders, electronic processing of loan forgiveness is more efficient.

Additionally, SBA has heard concerns from PPP lenders of all sizes that the requirement for borrowers to submit and lenders to review at the time of forgiveness the revenue reduction documentation for Second Draw PPP Loans of \$150,000 or less is delaying the forgiveness process for these borrowers.

To further simplify and streamline the forgiveness process for loans \$150,000 or less, SBA is making two changes under this interim final rule. First, for Second Draw PPP Loans of \$150,000 or less, where the borrower is required to provide revenue reduction documentation at the time of loan forgiveness, SBA is allowing lenders to use a COVID Revenue Reduction Score developed by SBA's contractor as an optional method to document the borrower's revenue reduction. Second, SBA is making available a direct borrower forgiveness process for lenders that choose to opt-in as an alternative method for processing borrower loan forgiveness applications for all PPP loans of \$150,000 or less.

1. COVID Revenue Reduction Score

Among other things, to be eligible for a Second Draw PPP Loan, a PPP borrower is required to have experienced a revenue reduction of not less than 25% during one quarter of 2020 compared to the same quarter in 2019. Under section 7(a)(37)(I) of the Small Business Act, when a borrower applies for a Second Draw PPP Loan of \$150,000 or less, the borrower can submit a certification that the borrower meets the revenue reduction standard, provided that on or before the date on which the borrower submits an application for loan forgiveness, the borrower produces adequate documentation that the borrower has met the revenue reduction standard. All Second Draw PPP Loan borrowers were required to certify on their

loan applications (SBA Forms 2483-SD and 2483-SD-C) that they realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period.

The Second Draw PPP Loan IFR and the Loan Forgiveness and Loan Review IFR implementing the Economic Aid Act provide that if a borrower with a Second Draw PPP Loan of \$150,000 or less did not produce documentation of revenue reduction at the time of application, the borrower must, on or before the date the borrower applies for loan forgiveness, submit to the lender documentation adequate to establish that the borrower experienced a revenue reduction of 25% or greater in 2020 relative to 2019, and such documentation may include relevant tax forms, including annual tax forms, or if relevant tax forms are not available, quarterly financial statements or bank statements. The rules also provide that where a borrower with a Second Draw PPP Loan of \$150,000 or less does not provide documentation of revenue reduction with its loan application, the lender must perform a good faith review of the documents provided by the borrower at or before forgiveness, including the borrower's calculations and supporting documents.⁵

To streamline forgiveness of Second Draw PPP Loans of \$150,000 or less where the borrower did not submit documentation of revenue reduction at the time of the loan application, SBA has determined that an alternative form of revenue reduction confirmation is warranted to document the borrower's revenue reduction.

⁵ As set forth in the Consolidated Eligibility IFR, Lenders must comply with the applicable lender obligations set forth in the interim final rule, but will be held harmless for borrowers' failure to comply with program criteria and will not be subject to any enforcement action or penalty relating to loan origination or forgiveness of the PPP loan if the lender acts in good faith relating to the origination or forgiveness of the PPP loan and satisfies all other applicable Federal, State, local, and other statutory or regulatory requirements (as provided in section 7A(h) of the Small Business Act, as amended) (86 FR 3692, 3695).

An independent third-party SBA contractor has developed a COVID Revenue Reduction Score (score) based on a variety of inputs including industry, geography, and business size. The score uses current data on economic recovery and return of businesses to operational status.⁶ Each Second Draw PPP Loan of \$150,000 or less will be assigned a score, which will be maintained in the Platform and will be visible to lenders to use on an optional basis as an alternative to document revenue reduction. Additionally, the score will be visible to those borrowers that submit their loan forgiveness applications through the Platform using the direct borrower forgiveness process.

When the score meets or exceeds the value required for validation of the borrower's revenue reduction, use of the score will satisfy the requirement for the borrower to document revenue reduction. When the score does not meet the value required for validation of the borrower's revenue reduction, and if the borrower has not already provided documentation to the lender that validates the borrower's revenue reduction, the borrower must provide documentation either directly to the lender (for those lenders that do not opt-in to the direct borrower forgiveness process) or provide documentation to the lender by uploading it to the Platform.

Shortly after issuance of this rule, SBA will be providing additional guidance regarding the procedures for lenders and borrowers to use the COVID Revenue

⁶ The independent third-party contractor will use a Consumer Demand Recovery Index that combines multiple data sources of the consumption of products and/or services (foot traffic, third party data, credit card spending, etc.) provided by businesses. Further, using the Business Operations Response Index, the score will measure the businesses' return to operational status, which includes employment and unemployment data, business to business payment transactions, mobility and foot traffic on workplace and visitor frequency at physical locations. The resulting score will reflect declines in revenue. The contractor has advised SBA that this methodology will result in a score that will adequately document that the borrower met the revenue reduction standard as required by section 7(a)(37)(I)(i)(II) of the Small Business Act.

Reduction Score, including when a score meets or exceeds the value required for validation of the required reductions in gross receipts and thus is considered adequate documentation of the borrower's revenue reduction.

2. Direct Borrower Forgiveness Process

In response to PPP lender and borrower concerns, SBA is implementing a direct borrower forgiveness process. The direct borrower forgiveness process is an optional technology solution that SBA is providing to PPP lenders that will leverage SBA's existing and proven Platform and align with and seamlessly integrate the streamlined forgiveness application for loans of \$150,000 or less mandated by the Economic Aid Act.

When a PPP lender opts-in to the direct borrower forgiveness process, the Platform will provide a single secure location for all of its borrowers with loans of \$150,000 or less to apply for loan forgiveness through the Platform using the electronic equivalent of SBA Form 3508S. Upon receipt of notice that a borrower has applied for forgiveness through the Platform, lenders will review the loan forgiveness application in the Platform and issue a forgiveness decision to SBA inside the Platform. SBA believes that lenders that opt-in to using the direct borrower forgiveness process will benefit with reduced costs, increased efficiency, and more timely remittance of forgiveness payments from SBA, while borrowers will benefit from the ability to submit loan forgiveness applications directly through the Platform and reduce the wait time and uncertainty associated with submission through their lender.

Shortly after issuance of this rule, SBA will be issuing more detailed

procedural guidance regarding (1) the process for lenders to opt-in to the direct borrower forgiveness process, (2) the process for borrowers with loans of \$150,000 or less to access the Platform and submit their loan forgiveness applications directly through the Platform, and (3) the process for lenders to access the forgiveness applications in the Platform to perform reviews of their borrowers' applications, issue forgiveness decisions to SBA, and request forgiveness payments from SBA. During the transition period after the launch of the direct borrower forgiveness process, lenders that opt-in will be expected to complete the processing of any loan forgiveness applications that have already been submitted by borrowers to the lender and should inform such borrowers not to submit a duplicate loan forgiveness application through the Platform.

After the launch of the direct borrower forgiveness process, borrowers will continue to submit loan forgiveness applications to their lenders, rather than through the Platform, under the following circumstances:

- The PPP lender does not opt-in to use the direct borrower forgiveness process;
- The borrower's PPP loan amount is greater than \$150,000;
- The borrower does not agree with the data as provided by the SBA system of record, or cannot validate their identity in the Platform (for example, if there is an unreported change of ownership); or
- For any other reason where the Platform rejects the borrower's submission.

In such circumstances, borrowers must follow instructions from their lender regarding how the lender expects the borrower to submit a forgiveness application for its PPP loan.

B. Deferment Extension for OHA Appeals

Currently, the rule for appeals of final SBA loan review decisions on PPP loans provides that because a PPP borrower must begin making payments of principal and interest on the remaining balance of its PPP loan when SBA remits the loan forgiveness amount to the PPP lender (or notifies the lender that no loan forgiveness is allowed), an appeal by a PPP borrower of any final SBA loan review decision does not extend the deferment period of the PPP loan. SBA is amending the appeals rule to, among other things, provide that a borrower's timely appeal of a final SBA loan review decision will extend the deferment period for the PPP loan until SBA's Office of Hearings and Appeals (OHA) issues a final decision on the appeal. The revised OHA rule will provide that the borrower should notify the lender of the appeal so that the lender can extend the deferment period. Under the revised OHA rule, an appeal petition must be filed with OHA within 30 calendar days after the appellant's receipt of the final SBA loan review decision.

SBA has determined that, in order to avoid the potential administrative burden of having to reverse implementation of the final SBA loan review decision, including the refund of borrower payments by the lender and the processing of forgiveness payments by SBA, a timely appeal by a PPP borrower of a final SBA loan review decision should extend the deferment period of the PPP loan. SBA believes that allowing for continued deferment is in the best interest of the borrower. For these reasons, SBA is conforming the applicable PPP rules to provide that a timely appeal by a PPP borrower of a final SBA loan review decision extends the deferment period of the PPP loan until OHA's decision becomes final

under 13 CFR 134.1211.

IV. Revisions to Prior PPP rules

Therefore, the following changes are made to PPP rules:

1st Revision: The first sentence of Part IV.2.a. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8287) is revised to read as follows:

2. Loan Forgiveness Process

a. What is the general process to obtain loan forgiveness?

To receive loan forgiveness on either a First Draw PPP Loan or a Second Draw PPP Loan, a borrower must complete and submit the Loan Forgiveness Application²⁷ to its lender (or to the lender servicing its loan), or for loans of \$150,000 or less if directed by its lender, through the Paycheck Protection Platform (forgiveness.sba.gov). * * *

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2nd Revision: Part IV.2.b. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8288) is revised by adding a sentence to the end of the paragraph to read as follows:

b. When must a borrower apply for loan forgiveness or start making payments on a loan?³¹

* * * Notwithstanding the foregoing, a borrower's timely appeal of a final SBA loan review decision extends the deferment period on the PPP loan until SBA's

²⁷ SBA Form 3508, 3508EZ, 3508S, as applicable, or lender equivalent. Loan Forgiveness Application forms were amended to conform to the Economic Aid Act, including section 307, which requires a simplified forgiveness application for loans of not more than \$150,000. The Simplified Forgiveness Application is SBA Form 3508S (as amended).

³¹ This subsection was originally published at 85 FR 38304, section III.1.e. (June 26, 2020), was modified to conform to sections 306 and 307 of the Economic Aid Act by 86 FR 8283, 8288 (February 5, 2021), and is being further modified to incorporate deferments due to appeals.

Office of Hearings and Appeals issues a final decision on the appeal under 13 CFR 134.1211.

3rd Revision: Part IV.6.a. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8293) is revised by adding a sentence to the end of the first paragraph to read as follows:

6. Documentation Requirements

a. What must borrowers submit for forgiveness of their PPP loans?

* * * If a Second Draw PPP Loan borrower's COVID Revenue Reduction Score in the Paycheck Protection Platform meets or exceeds the value required to validate the borrower's revenue reduction, no additional documentation is required to be submitted by the borrower.

* * * * *

4th Revision: The first sentence of Part IV.6.b. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8293) is revised to read as follows:

b. What documentation are borrowers who are individuals with self-employment income who file a Form 1040, Schedule C or F required to submit to their lender with their request for loan forgiveness?

For borrowers that received loans of \$150,000 or less that use the SBA Form 3508S, the borrower must submit the certification and information required by section 7A(l)(1)(A) of the Small Business Act and, for a Second Draw PPP Loan, revenue reduction documentation (which could be the COVID Revenue Reduction Score, if applicable) if such documentation was not provided at the time of application.⁶⁸ * * *

⁶⁸ See subsection (g)(2)(v) of the interim final rule on Second Draw PPP Loans. 86 FR 3712, 3721 (Jan. 14, 2021).

* * * * *

5th Revision: Part IV.6.c. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8293) is revised by adding a sentence to the end of the third paragraph to read as follows:

c. What additional documentation must a borrower submit when the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any of the preceding, directly or indirectly holds a controlling interest in the borrower?

* * * * *

* * * If a borrower with a First Draw PPP Loan of \$150,000 or less submits its loan forgiveness application through the Paycheck Protection Platform (Platform), the borrower must submit any required SBA Form 3508D through the Platform not later than 30 days after submitting its application through the Platform.

* * * * *

6th Revision: Footnote 82 in Part V.1.f. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8295) is revised to read as follows:

See 85 FR 52833 (Aug. 27, 2020), as amended.

7th Revision: The SBA Form 3508S subsection of Part V.2.a. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8296) is revised to read as follows:

2. The Loan Forgiveness Process for Lenders

a. What should a lender review?

* * * * *

When a borrower submits SBA Form 3508S or lender's equivalent form, the lender shall:

i. Confirm receipt of the borrower certifications contained in the SBA Form 3508S or lender's equivalent form.

ii. In the case of a Second Draw PPP Loan of \$150,000 or less for which the borrower did not provide documentation of revenue reduction with its application and the lender did not conduct a review of the documentation at the time of application:

If the borrower submits its loan forgiveness application to the lender, the lender may review the borrower's COVID Revenue Reduction Score (score) in the Platform to confirm that it meets or exceeds the value required to validate the required reduction in gross receipts. If the borrower's score does not meet or exceed the required value, the lender must confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction.⁸⁵

If the borrower submits its loan forgiveness application through the Paycheck Protection Platform (Platform), the lender must review the borrower's score in the Platform to confirm that it meets or exceeds the value required to validate the required reduction in gross receipts. If the borrower's score does not meet or exceed the required value, the lender must review the revenue reduction documentation uploaded by the borrower into the Platform and confirm the dollar amount and

⁸⁵ See subsection (h)(2)(i)(D) of the interim final rule on Second Draw PPP Loans. 86 FR 3712, 3721 (Jan. 14, 2021).

percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction.

For those borrowers that are required to submit documentation regarding revenue reduction (other than a COVID Revenue Reduction Score), if the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents regarding revenue reduction, the lender should work with the borrower to remedy the issue. Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule⁸⁶ and section IV.7 above indicate, lenders may rely on borrower representations. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness (if required) and attests that it accurately verified the payments for eligible costs.

8th Revision: The first sentence of the first paragraph of Part V.2.b. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8296) is revised to read as follows:

b. What is the timeline for the lender's decision on a loan forgiveness application?

⁸⁶ 85 FR 20811, 20815-20816 (Apr. 15, 2020).

The lender must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower or, if applicable, notification by the Paycheck Protection Platform (Platform) that the borrower has submitted a loan forgiveness application into the Platform. * * *

* * * * *

9th Revision: Part III.B.9. of the Consolidated Eligibility IFR (86 FR 3692, 3703) is revised to add a fourth paragraph at the end that reads as follows:

9. When will I have to begin paying principal and interest on my PPP loan?

* * * * *

Notwithstanding the foregoing, a borrower's timely appeal of a final SBA loan review decision extends the deferment period on the PPP loan until SBA's Office of Hearings and Appeals issues a final decision on the appeal under 13 CFR 134.1211.

10th Revision: Part IV.(g)(2)(v) of the Second Draw IFR (86 FR 3712, 3721) is revised to read as follows:

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

* * * * *

(2) * * *

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

include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, a copy of the applicant's quarterly income statements or bank statements. A COVID Revenue Reduction Score that meets or exceeds the value required to validate the required reduction in gross receipts will be considered adequate documentation of the borrower's revenue reduction.

11th Revision: Part IV.(h)(2)(D) of the Second Draw IFR (86 FR 3712, 3721) is revised to read as follows:

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

(2) * * *

(D) For a Second Draw PPP Loan greater than \$150,000 or a loan of \$150,000 or less where the borrower provides documentation of revenue reduction, confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction. For a loan of \$150,000 or less where the borrower does not provide documentation of revenue reduction with its application, the lender shall perform this review when the borrower provides such documentation. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue. For loans of \$150,000 or less where the lender elects to use the COVID Revenue Reduction Score (score) in the Paycheck Protection Platform (Platform) or where the lender has opted-in to the direct borrower forgiveness process and the borrower submits a loan forgiveness application to the lender through the Platform, the lender must review the borrower's score to confirm that it meets or exceeds the value required to

validate the required reduction in gross receipts, otherwise the lender must review the borrower's supporting documentation in accordance with the foregoing requirements.

* * * * *

12th Revision: Part IV.(j) of the Second Draw IFR (86 FR 3712, 3722) is revised to read as follows:

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

Second Draw PPP Loans are eligible for loan forgiveness on the same terms and conditions as First Draw PPP Loans, except that Second Draw PPP Loan borrowers with a principal amount of \$150,000 or less are required to provide documentation of revenue reduction if such documentation was not provided at the time of the loan application as specified in subsections (g)(2)(iv) and (v) of this section. If a lender elects to use the COVID Revenue Reduction Score (score) in the Paycheck Protection Platform (Platform) or where the lender has opted-in to the direct borrower forgiveness process and the borrower submits a loan forgiveness application to the lender through the Platform, a score that meets or exceeds the value required to validate the required reduction in gross receipts will be considered adequate documentation of the borrower's revenue reduction.

V. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at www.sba.gov. Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Compliance with Executive Orders 12866, 12988, 13132 and 13563, the

Congressional Review Act, the Administrative Procedure Act, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612).

Executive Orders 12866 and 13563

OMB's Office of Information and Regulatory Affairs (OIRA) has determined that this interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency.

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

Congressional Review Act and Administrative Procedure Act

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

Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall

take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), SBA for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest. Likewise, for the same reasons, SBA for good cause finds that there are grounds to waive the 30-day effective date delay under the Administrative Procedure Act. 5 U.S.C. 553(d)(3).

As discussed elsewhere in this interim final rule, given the urgent need to provide borrowers with timely relief and the short period of time before certain borrowers will be required to begin making principal and interest payments if they have not yet applied for forgiveness with their lenders, SBA has determined that it is impractical and not in the public interest to provide a delayed effective date. An immediate effective date will allow SBA to expedite loan forgiveness to small businesses and nonprofit organizations and remit forgiveness payments to lenders.

Executive Order 12988

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

Executive Order 13132

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

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

SBA has determined that this rule will require revisions to existing recordkeeping or reporting requirements of the Paycheck Protection Program (PPP) information collection, OMB Control Number 3245–0407. The revisions will affect SBA Forms 3508S and 3508D. SBA Form 3508S will be revised to incorporate the direct borrower forgiveness process and the COVID Revenue Reduction Score. SBA Form 3508D will be revised to incorporate the direct borrower forgiveness process.

SBA has requested Office of Management and Budget (OMB) emergency approval of the revisions to the information collections to give small businesses and nonprofits affected by this interim final rule the maximum amount of time to apply for loan forgiveness under the new procedures.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the *Federal Register*. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is

exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

Authority: 15 U.S.C. 636(a)(36); 15 U.S.C. 636(a)(37); and 15 U.S.C. 636m; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, section 1114, and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. 116-260, section 303.

Isabella Casillas Guzman,
Administrator.