

## I. IFR Implementing Updates to PPP First Draw Loans

### A. OVERVIEW

- March 31, 2021 is the last day to apply and receive a first draw loan.
- Borrowers may choose between 2019 and 2020 as their base period for calculating their loan principal. Farmers and Ranchers must use 2019.
- Lenders may rely on certifications of Borrowers.
- Lenders must comply with program criteria but will be held harmless for Borrower's failures to comply with their responsibilities.
- Lenders are not responsible for Agent fees incurred by Borrower unless Lender contracted with such Agent.
- The definition of "Benefits" has been expanded in scope to include: payments for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees
- Program is expected to open within 7 days of release of this IFR.

### B. IMPORTANT LENDER INFORMATION

#### General Lender Information

##### *1. What underwriting requirements must Lenders follow?*

Each Lender shall:

- (1) Confirm receipt of borrower certifications contained in PPP Borrower Application SBA Form 2483;
- (2) Confirm receipt of information demonstrating that a borrower was either an eligible self-employed individual, IC, or Sole Prop with no employees or had employees for whom the Borrower paid salaries and payroll taxes on or around February 15, 2020;
- (3) Confirm the dollar amount of average monthly payroll costs for 2019 or 2020 by reviewing the payroll documentation submitted with the borrower's application; and
- (4) Follow applicable SBA requirements.

##### *2. Can lenders rely on Borrowers documentation for loan forgiveness?*

Yes. Lender does not need to independently verify the Borrower's reported information if the Borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

##### *3. By when must a Lender electronically submit a Form 1502 indicating that PPP loan funds have been disbursed?*

SBA made available a specific SBA Form 1502 reporting process through which PPP Lenders report on PPP loans and collect the processing fee on fully disbursed loans to which they are entitled. Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved. The Lender must report on a SBA Form 1502 whether it has fully disbursed the loan proceeds.

4. *Which Borrowers can reapply or request an increase in their PPP amount?*

The following Borrowers can reapply or request an increase in their PPP loan amount:

- (1) If a Borrower returned all of a PPP loan, the Borrower may reapply for a PPP loan in an amount the Borrower is eligible for under current PPP rules.
- (2) If a Borrower returned part of a PPP loan, the Borrower may reapply for an amount equal to the difference between the amount retained and the amount previously approved;
- (3) If a Borrower did not accept the full amount of a PPP loan for which it was approved, the Borrower may request an increase in the amount of the PPP loan up to the amount previously approved.

Agent Fees

1. *Are Lenders responsible for Agent fees incurred by Borrowers?*

No. Lenders are only responsible for paying fees to an agent for services for which the lender directly contracts with an agent.

C. IMPORTANT BORROWER INFORMATION

General Borrower Information

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

Generally, the same eligibility requirements from the first round of PPP exist. The new rules do clarify what documentation is necessary for demonstrating eligibility: Payroll records, payroll tax filings, form 1099-MISC, Schedule C or F, and income expenses from a sole proprietorship or bank records.

2. *Are employees of foreign affiliates included for purposes of determining whether a PPP borrower has more than 500 employees (300 for Second Draw Borrowers)?*

Yes. To calculate the number of employees of an entity for purposes of determining eligibility for the PPP, and entity must include all of its domestic and foreign affiliates, except those limited circumstances where the affiliation rules expressly do not apply to the entity.

3. *I have income from self-employment and file a Form 1040, Schedule C. Am I eligible for a PPP loan?*

If you: (1) were in operation on February 15, 2020; (2) are an individual with self-employment income (IC or Sole Prop); (3) Are located in the USA; and (4) filed a Form 1040 Schedule C for 2019 you qualify for a PPP loan. However, if you are a partner in a partnership you may not submit a separate PPP loan application for yourself as a self-employed individual. Instead, the self-employment income of general

active partners may be reported as a payroll cost, up to \$100,000.00 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make payments is incurred on a PPP loan application filed by or on behalf of the partnership.

4. *If seasonal business was dormant or not fully operating as of February 15, 2020, is it still eligible?*

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

#### Industry Specific Questions

1. *Is a hospital owned by governmental entities eligible for a PPP loan?*

Yes, only if the hospital receives less than 50% of its funding from state or local government sources, exclusive of Medicaid.

2. *Are businesses that receive revenue from legal gaming eligible for a PPP loan?*

Yes, as long as it is legal gaming.

3. *Are housing cooperatives as defined in section 216(b) of the IRC of 1986 eligible for a PPP loan?*

Yes, as long as they employ less than 300 employees and all other eligibility requirements are met.

4. *Are 501(c)(6) organizations eligible for PPP loans?*

Yes. Any organization that is described in section 501(c)(6) of the IRC and that is exempt from taxation under section 501(a) of such Code (excluding professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity) shall be eligible to receive a PPP loan as long as other eligibility requirements are met and if: (1) the organization does not receive more than 15% of its receipts from lobbying activities; (2) the lobbying activities of the organization do not compromise more than 15% of the total activities of the organization; (3) the cost of the lobbying activities of the organization did not exceed \$1,000,000.00 during the most recent tax year of the organization that ended prior to February 15, 2020; and (4) the organization employs not more than 300 employees.

#### Ineligible Businesses

1. *Could a Borrower be ineligible even if they meet the general requirements?*

Potentially. A Borrower is ineligible if the Borrower is: (1) engaged in illegal activity; (2) A household employer (individuals who employ household employees such as nannies or housekeepers); (3) An owner of 20% or more of the equity of the applicant is presently incarcerated or, for a felony, presently subject to an indictment criminal information, arraignment, or other means by which formal charges are brought in any jurisdiction; or has been convicted of, pleaded guilty, or commenced any form of parole or probation for a felony involving fraud, bribery, embezzlement, or a false statement in a loan application

or application for federal financial assistance within the last 5 years or any other felony within the last year; (4) Delinquent or defaulted within the last 7 years on a loan guaranteed by the SBA; (5) Not in operation on February 15, 2020; (6) Has or will receive aid under the Shuttered Venue Operator Grant program; (6) The President, Vice President, head of an Executive Department, or a Member of Congress, or the spouse of such a person as determined under applicable common law, directly or indirectly holds a controlling interest in the business; (8) An issuer of securities listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934; or (9) the business is closed.

2. *Can a Borrower apply for a PPP loan if in bankruptcy?*

No. If the Borrower is a debtor in a bankruptcy proceeding either at the time it submits the application or any time before the funds are disbursed, they are ineligible.

3. *Are hedge funds and private equity funds available?*

No.

### Affiliation Rules

1. *Are affiliates considered together for purposes of determining eligibility?*

In most cases, a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP. Under SBA rules, entities may be considered affiliates based on factors including but not limited to stock ownership, overlapping management, and identity of interest.

2. *How do the affiliation rules affect Faith-Based Organizations?*

This rule exempts otherwise qualified faith-based organizations from the SBA's affiliation rules, where the application of those rules would substantially burden those organizations religious exercise.

3. *Does participation in an employee stock ownership plan (ESOP) trigger application of the affiliation rules?*

No. For PPP purposes, a business's participation in an ESOP does not result in an affiliation between the business and the ESOP.

### Borrowing Limits and Calculations

1. *How much may First Draw Borrowers borrow?*

The maximum loan amount for First Draw PPP loans is the lesser of \$10,000,000.00 or an amount that the Borrower will calculate using the required payroll-based formula. PPP loans approved in 2020 used a 2019 or the 1-year before the date on which the loan is made to calculate payroll costs for the purposes of calculating the maximum loan amount. Borrowers who apply for PPP loans in 2021 and who are not self-employed (including sole props and ICs) are also permitted to use the precise 1-year period before the date on which the loan is made to calculate the payroll costs if they choose not to use 2019 or 2020.

2. *How is the loan amount calculated?*

Step 1: Aggregate payroll costs from 2019 or 2020 for employees whose Primary Place of Residence (PPOR) is in the United States.

Step 2: Subtract any compensation paid to an employee in excess of \$100,000.000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make payments is incurred.

Step 3: Calculate average monthly payroll costs (divide the amount from step 2 by 12).

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

Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that is being refinanced. Do not include the amount of any “advance” under an EIDL loan as it does not have to be repaid.

3. *Self-Employment, Form 1040, Schedule maximum loan amount calculations.*

If NO Employees:

Step 1: Find 2019 or 2020 IRS Form 1040 Schedule C line 31 net profit amount (if using 2020 to calculate payroll costs and have not yet filed, fill one out and complete the value). If this amount is over \$100,000.00, reduce it to \$100,000.00. If this amount is zero or less, Borrower is ineligible.

Step 2: Calculate the average monthly net profit amount (divide the amount from step 1 by 12).

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

Step 4: Add the outstanding amount of any EIDL loan made between January 31, 2020 and April 3, 2020 that Borrower seeks to refinance. Do not include the amount of any advance under EIDL.

If individual HAS employees:

Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding the following: (1) 2019 or 2020 form 1040 Schedule C line 31 net profit amount (if using 2020 and have not yet filed a 2020 return, fill it out and compute the value), up to \$100,000.00 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, if this amount is over \$100,000.00, reduce it to \$100,000.00. If amount is less than zero, set it at zero; (2) 2019 or 2020 gross wages and tips paid to employees whose principal place of residence is in the United States computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages and tips (line 5c-column 1) from each quarter plus any pretax employee contributions for health insurance or other fringe benefits excluded from the Taxable Medicare wages & tips; subtract any amounts paid to any individual employee in excess of \$100,000.00 on an annualized basis, as prorated for the period during which payments are made or the obligation to make the payments is incurred and any amounts paid to any employee whose PPOR is outside the United States; and (3) 2019 or 2020 employer contributions to employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040 Schedule C line 14 attributable to those contributions); retirement contributions (Form 1040 Schedule C line 19), and state and local taxes assessed on employee compensation (primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms.

Step 2: Calculate the average monthly amount (divide the amount from step 1 by 12).

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

Step 4: Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that is being refinanced. Do not include any EIDL advance.

#### 4. *Seasonal Employer Loan Calculations.*

A Borrower is a seasonal employer if: "...it does not operate for more than 7 months in any calendar year or, during the preceding calendar year, it had gross receipts for any 6 months of that year that were not more than 33.33% of the gross receipts for the other 6 months of that year. Seasonal Employers must determine its maximum loan amount for purposes of the PPP by using the employer's average monthly total payments for payroll for any 12 week period selected by the seasonal employer beginning February 15, 2019, and ending February 15, 2020.

#### 5. *What qualifies as "Payroll Costs?"*

Payroll costs consist of compensation to employees (whose PPOR is in the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good faith employer estimate of such tips); payments for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an IC or Sole Prop, wages, commissions, income, or net earnings from self-employment, or similar compensation.

#### 6. *What is expressly excluded from Payroll Costs?*

- (1) Any compensation of an employee whose PPOR is outside of the United States;
- (2) The compensation of an individual employee in excess of \$100,000.00 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payment is incurred;
- (3) Federal employment taxes imposed or withheld during the applicable period, including the employee's end employer's share of Federal Insurance Contributions Act, and Railroad Retirement Act Taxes, and income taxes required to be withheld from employees; and
- (4) Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First COVID Response Act.

#### 7. *What is the maturity date on a PPP loan?*

5 years.

#### 8. *Can a Borrower apply for more than one First Draw PPP Loan?*

No.

9. *What benefits can PPP proceeds be used for?*

Group health care, life, disability, vision, or dental benefits during periods of paid sick, medical, or family leave, and group health care, life, disability, vision, or dental insurance premiums.

10. *What happens if PPP loans are misused?*

If a Borrower misuses PPP funds for unauthorized purposes, the SBA will require those funds be repaid by Borrower. If a Borrower knowingly misuses the funds for unauthorized purposes, the Borrower will be subject to additional liability such as charges for fraud.

## **II. IFR Implementing Updates to PPP Second Draw Loans**

### **A. OVERVIEW**

- Second Draw Loans will be available until March 31, 2021 to Borrowers who previously received a PPP loan and have used or will use the full amount of the initial PPP loan for authorized purposes only on or before the expected date of disbursement of the Second Draw PPP Loan.
- Second Draw PPP loans are generally issued under the same standards, rules, terms, and conditions as First Draw PPP loans.
- Immediate implementation of this program is expected. Realistically speaking loans can begin beginning Monday, January 11, 2021.
- Generally, the same calculations for Farmers and Ranchers that applies to First Draw PPP Loan Borrowers applies to Second Draw PPP Loan Borrowers.
- 100% guarantee from SBA.
- No collateral required.
- No personal guarantees.
- 1% interest rate.
- 5-year maturity.
- All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the Borrower to determine the Borrower's eligibility and use of PPP loan proceeds.

### **B. ELIGIBILITY REQUIREMENTS**

1. *General Eligibility Requirements*

Generally speaking, the eligibility requirements for Second Draw PPP Loans are narrower than First Draw PPP Loans. A Borrower is eligible if it has 300 or fewer employees (some exceptions) and experienced a revenue reduction in 2020 relative to 2019. In addition, Second Draw PPP Loans may only be made to an eligible borrower that (1) has received a First Draw PPP Loan; and (2) has used, or will use, the full amount of the First Draw PPP loan on or before the expected date on which the Second Draw

PPP Loan is disbursed to the borrower. If a Borrower did not comply with the requirements of the First Draw PPP Loan, they are ineligible for a Second Draw PPP Loan.

2. *Revenue Reduction Requirement.*

To be eligible for a Second Draw PPP Loan, the Borrower must have experienced a revenue reduction of 25% or greater in 2020 relative to 2019. A Borrower must calculate this revenue reduction by comparing the Borrower's quarterly gross receipts for one quarter in 2020 with the Borrower's gross receipts for the corresponding quarter of 2019. For example, a Borrower with gross receipts of \$50,000.00 in the second quarter of 2019 and gross receipts of \$30,000.00 on the second quarter of 2020 has experienced a revenue reduction of 40% between the quarters, and is therefore eligible for a Second Draw PPP loan (assuming all other criteria are met). A Borrower that was in operation in all 4 quarters of 2019 is deemed to have experienced the required reduction if it experienced a reduction in annual receipts of 25% or greater in 2020 compared to 2019 and the Borrower submits copies of its annual tax return forms substantiating the revenue decline. This method will provide small Borrowers that may not have quarterly revenue information readily available an opportunity to participate in the program. A Borrower that did not experience a 25% annual decline in revenues, or that was not in operation all four quarters of 2019, may still meet the revenue reduction requirement under one of the quarterly measurements just described.

3. *Businesses with more than one physical location (hotels and restaurant chains).*

Any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and employs not more than 500 employees per physical location is eligible to receive a First Draw PPP Loan. Furthermore, affiliation rules do not apply to businesses with an assigned NAICS code beginning with 72 and that does not employ more than 500 employees. As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity and employs not more than 500 employees, each hotel or restaurant location is permitted to apply for a spate PPP loan. The Second Drawn PPP Loans reduced this requirement to 300 employees.

C. AFFILIATION RULES

The same affiliation rules that apply to the First Draw PPP Loans (explained above) apply to the Second Draw PPP Loans, only the employee requirement is now reduced to 300 as opposed to 500.

D. EXCLUDED ENTITIES

An entity that is or was ineligible to receive a First Draw PPP Loan is also ineligible for a Second Draw PPP Loan. Additionally, several additional categories of Borrowers are prohibited from receiving a Second Draw PPP Loan:

- (1) A business concern or entity primarily engaged in political activities or lobbying activities, including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy that describes itself as a think tank in any public documents;

- (2) Certain entities organized under the laws of the People’s Republic of China or the Special Administrative Region of Hong Kong, or with specified ties to the People’s Republic of China;
- (3) Any person required to submit a registration under section 2 of the Foreign Agents Registration Act of 1938;
- (4) A person or entity that receives a grant for shuttered venue operators under Section 324 of the Economic Aid Act;
- (5) entities in which the President, the Vice President, the head of an Executive Department, or a Member of Congress, or the Spouse of such person owns, controls, or holds at least 20% of any class of equity; or
- (6) A publically traded company.

#### E. PAYROLL COST CALCULATION

The maximum amount of a Second Draw PPP Loan is the lesser of two and a half months of the Borrower’s average monthly payroll costs or \$2 million. Unlike First Draw PPP Loans, Second Draw PPP Loans provide for the relevant time period for calculating Borrower’s payroll costs for a Second Draw PPP Loan as either the 12 month period prior to when the loan is made or the calendar year 2019. Calculating payroll costs based on the calendar year 2020 rather than the 12 months preceding the date the loan is made will simplify calculations for Borrowers.

Generally, the same calculation rules that apply to Farmers and Ranchers for First Draw PPP Loan Borrowers applies to Farmers and Ranchers for Second Draw PPP Loan Borrowers.

Self Employed individuals and Partnerships follow the same calculation rules from the First Draw PPP Loan as the Second Draw PPP Loan with the only difference being the provision for refinancing an EIDL loan is eliminated.

#### F. SECOND DRAW PPP LOAN APPLICATION DOCUMENTATION

The documentation required to substantiate an applicant’s payroll cost calculations is generally the same as documentation required for First Draw PPP Loans. However, no additional substantive payroll costs will be required if the applicant (1) used calendar year 2019 figures to determine its First Draw PPP Loan amount; (2) used calendar year 2019 figures to determine its Second Draw PPP Loan amount (instead of calendar year 2020); and (3) the Lender for the applicant’s Second Draw PPP Loan is the same Lender that made the First Draw PPP loan. In such cases, additional documentation is not required because the lender already has the relevant documentation supporting Borrower’s payroll costs. For loans greater than \$150,000.00, the applicant must also submit documentation adequate to establish that the applicant experienced a reduction of 25% or greater relative to 2019.

#### G. LENDER REQUIREMENTS

For a Second Draw PPP Loan greater than \$150,000.00, the Lender must confirm the dollar amount and percentage of the Borrower’s revenue reduction by performing a “good faith” review, in a reasonable time, of the borrower’s calculations and supporting documents concerning the borrower’s revenue

reduction. If the Lender identifies errors in the borrower's calculation or a material lack of substantiation in the Borrower's supporting documents, the Lender should work with the Borrower to remedy the issue.

## H. LOANS TO BORROWERS WITH UNRESOLVED FIRST DRAW PPP LOAN

The SBA may review any PPP loan as the SBA appropriate. If a Borrower's First Draw PPP loan is under review by SBA and/or information in SBA's possession indicates that the borrower may have been ineligible for the First Draw PPP Loan it received or for the loan amount it received, the Lender will receive notification from SBA when the Lender submits an application for a guaranty of a Second Draw PPP Loan and will not receive an SBA loan number until the issue related to the unresolved Borrower's First Draw PPP Loan is resolved. SBA will resolve issues related to unresolved Borrowers "expeditiously." These procedures are designed to promote compliance with the eligibility requirements for Second Draw PPP Loans by preventing additional loans from being made to Borrowers that were not eligible for a First Draw PPP Loan or received an impermissible loan amount. At the same time, these procedures do not disqualify an eligible unresolved Borrower from receiving a Second Draw PPP Loan, in recognition that many flags will be resolved in the Borrower's favor.

## I. ADDITIONAL INFORMATION

### 1. *What requirements apply to Second Draw PPP Loans?*

Second Draw PPP Loans are subject to SBA's and the Department of the Treasury's consolidated interim final rule implementing the Paycheck Protection Program and all PPP loan program requirements.

### 2. *Who is eligible for a Second Draw PPP Loan?*

The following applicants are eligible for Second Draw PPP Loans:

(1) An applicant is eligible for a Second Draw PPP Loan if it is a business concern, independent contractor, eligible self-employed individual, sole proprietor, nonprofit organization eligible for a First Draw PPP Loan, veterans organization, Tribal business concern, housing cooperative, small agricultural cooperative, eligible 501(c)(6) organization or destination marketing organization, or an eligible nonprofit news organization that: (i) previously received a First Draw PPP loan in accordance with the eligibility criteria in the Consolidated First Draw PPP IFR; (ii) has used, or will use, the full amount of its First Draw PPP Loan; (iii) employs not more than 300 employees, unless it satisfies the alternative criteria for businesses with a North American Industry Classification System ("NAICS") code beginning with 72 and eligible news organizations with more than one physical location described in subsection (c)(3) or (c)(4) of this section; and (iv) experienced a reduction in revenue in calendar year 2020, measured as follows:

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

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

- if the applicant was not in business during the first, second, or third quarter of 2019, but was in business during the fourth quarter of 2019, the applicant had gross receipts during the first, second, third, or fourth quarter of 2020 that demonstrate at least a 25 percent reduction from the fourth quarter of 2019 (for example, an applicant that had gross receipts of \$50,000 in the fourth quarter of 2019 and had gross receipts of \$30,000 in the fourth quarter of 2020—demonstrating a reduction of 40 percent from the applicant's gross receipts during the fourth quarter in 2019); or
- if the applicant was not in business during 2019, but was in operation on February 15, 2020, the applicant had gross receipts during the second, third, or fourth quarter of 2020 that demonstrate at least a 25 percent reduction from the gross receipts of the entity during the first quarter of 2020 (for example, an applicant that had gross receipts of \$50,000 in the first quarter of 2020 and had gross receipts of \$30,000 in the fourth quarter of 2020 – demonstrating a reduction of 40 percent from the applicant's gross receipts during the first quarter in 2020). (B) An applicant that was in operation in all four quarters of 2019 is deemed to have experienced the revenue reduction in subsection (c)(1)(iv)(A)(1) if it experienced a reduction in annual receipts of 25 percent or greater in 2020 compared to 2019 and the borrower submits copies of its annual tax forms substantiating the revenue decline.

### 3. *How do SBA's affiliation rules affect an applicant's eligibility for a Second Draw PPP Loan?*

Eligibility for Second Draw PPP Loans is governed by the same affiliations rules as First Draw PPP Loans, except for:

- (1) Any business concern with not more than 300 employees that, as of the date on which the covered loan is disbursed, is assigned a NAICS code beginning with 72; and
- (2) (A) any business concern (including any station which broadcasts pursuant to a license

### 4. *Who is not eligible for a Second Draw PPP Loan?*

An applicant is not eligible for a Second Draw PPP Loan, even if it meets the eligibility requirements of the rules, if the applicant is:

- (1) Excluded from eligibility under the Consolidated First Draw PPP;
- (2) A business concern or entity primarily engaged in political activities or lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602), including any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents;
- (3) Any business concern or entity for which an entity created in or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or that has significant

operations in the People's Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership, or that retains, as a member of the board of directors of the business concern, a person who is a resident of the People's Republic of China;

(4) Any person required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938;

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

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

(7) Any issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934;

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

(9) An entity that has permanently closed.

5. *What is the maximum loan amount for a Second Draw PPP Loan?*

In general, the maximum loan amount for a Second Draw PPP Loan is equal to the lesser of two and half months of the borrower's average monthly payroll costs or \$2,000,000.00. A Borrower's average monthly payroll costs may be based on calendar year 2020 or calendar year 2019.

6. *What do lenders have to do in terms of loan underwriting?*

Each lender shall:

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

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

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

(4) 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.

7. *Will an applicant's Second Draw PPP Loan application be affected if there are unresolved issues regarding the applicant's First Draw PPP Loan?*

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

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

8. *Are Second Draw PPP Loans eligible for loan forgiveness?*

Yes, 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 Second Draw loan application.