CONTINUING SMALL BUSINESS RECOVERY AND PAYCHECK PROTECTION PROGRAM ACT
SECTION-BY-SECTION

Section 1. Short Title; Table of Contents.
Section 2. Definitions.
Section 3. Emergency Rulemaking Authority. This section requires the SBA Administrator to establish regulations to carry out this title no later than 30 days after the enactment of this title.

<u>Title 1. Paycheck Protection Program Improvements</u>
Section 101. Additional Eligible Expenses. This section would make the following expenses allowable and forgivable uses for Paycheck Protection Program funds:

- <u>Covered operations expenditures.</u> Payment for any software, cloud computing, and other human resources and accounting needs.
- <u>Property damage costs.</u> Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
- <u>Covered supplier costs.</u> Expenditures to a supplier pursuant to a contract for goods in effect prior to February 15, 2020 that are essential to the recipient's current operations.
- <u>Covered worker protection expenditure.</u> Personal protective equipment and adaptive investments to help a loan recipient comply with federal health and safety guidelines related to COVID-19 during the period between March 1, 2020, and December 31, 2020.

Section 102. Lender Safe Harbor. This section would provide that no enforcement action could be taken against a lender who in good faith relied on a certification or documentation submitted by a borrower of a covered loan.

Section 103. Selection of Covered Period for Forgiveness. This section allows the borrower to elect a covered period ending at the point of the borrower's choosing between 8 weeks after origination and December 31, 2020.

Section 104. Simplified Application. This section creates a simplified application process such that:

- <u>For loans under $150,000.</u> Borrowers are not required to submit to the lender documentation required by section 1106(e) of the CARES Act, but must attest to a good faith effort to comply with Paycheck Protection Program loan requirements, retain relevant records for three years, and may complete and submit demographic information. The Administrator may review and audit these loans to ensure against fraud.
- <u>For loans between $150,000 and $2 million.</u> Borrowers are not required to submit to the lender documentation required by section 1106(e) of the CARES Act, but must complete the certification required by that section, retain relevant records and worksheets for three years, and may complete and submit demographic information. After lenders review the application for completeness, they must submit the application to the Administrator. The Administrator may review and audit these loans for fraud.
- The SBA must submit to the Senate and House Small Business Committees a report 30 days after enactment detailing their review and audit plan to mitigate risk of fraud and provide monthly reviews and audit updates thereafter.

Section 105. Group Insurance Payments as Payroll Costs. This section clarifies that other employer-provided group insurance benefits are included in payroll costs.

Section 106. Paycheck Protection Program Second Draw Loans. This section creates a second loan from the Paycheck Protection Program for eligible businesses and businesses qualifying originally under this eligibility.

- Eligibility. In order to receive a Paycheck Protection Program loan under this section, eligible entities must:
    1. meet the SBA's revenue size standard, if applicable;
    2. employ not more than 300 or fewer employees; and
    3. demonstrate at least a 50 percent reduction in gross receipts in the first or second quarter of 2020 relative to the same 2019 quarter.
- Eligible entities must be businesses, certain non-profit entities, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, or small agricultural co-operatives.
- Ineligible entities include publicly-traded businesses, entities listed in 13 C.F.R. 120.110 except for entities from that regulation which have otherwise been made eligible by statute or guidance, businesses in financial services which received a Paycheck Protection Program loan in the first round of funding, and entities affiliated with entities in the People's Republic of China.
- Loan terms. In general, borrowers may receive a loan amount of to 2.5 times average total monthly payroll costs in the one year prior to the loan, up to $2 million.
    - Seasonal employers may calculate their maximum loan amount based on a 12-week period beginning February 15, 2019 or March 1, 2019, and ending June 30, 2019, or any consecutive 12-week period between May 1, 2019 and September 15, 2019.
    - New entities may calculate loans by taking 2.5x the sum of total monthly payments divided by the total number of months in which payments were made.
    - Businesses in NAICS Code 72 will be considered eligible if no single location employs more than 300 employees. These firms may not receive a loan greater than $2 million in total.
    - An eligible entity may only receive one covered loan.
    - Businesses who have received a Paycheck Protection Program loan may not receive another SBA loan that aggregates to an excess of $10 million.
- Churches and religion organizations. Expresses the sense of Congress that the Administrator's guidance clarifying the eligibility of churches and religious organizations was proper and prohibits the application of regulations otherwise rendering ineligible businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs.
- Loan forgiveness. Borrowers of a Paycheck Protection Program Second Draw would be eligible for loan forgiveness equal to the sum of their payroll costs, covered mortgage, rent, utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred before January 1, 2021. The 60/40 cost allocation between payroll and non-payroll costs in order to receive full forgiveness will continue to apply.

- Lender compensation. The Administrator is authorized to reimburse a lender for three percent of the principal amount of the loan up to $350,000 and one percent of the principal thereafter.
- Set-aside for small entities. $25 billion in funds is set aside for entities employing 10 or fewer employees.
- Set-aside for Community Lenders. $10 billion in funds is set aside to be made by community financial institutions; insured depository institutions with consolidated assets of less than $10 billion; credit unions with consolidated assets of less than $10 billion; and farm credit system institutions with assets of less than $10 billion.
- Guidance to prioritize underserved communities. Directs the Administrator to issue guidance addressing barriers to access to capital for underserved communities.
- Standard Procedures. Directs the SBA to allow lenders to approve loans made under this paragraph utilizing existing program guidance and standard operating procedure, to the maximum extent possible, as the standard SBA 7(a) program.
- Compliance with oversight. Directs the Administrator to comply with GAO and IG oversight requests.

Section 107. Continued Access to the Paycheck Protection Program. This section reduces the maximum amount borrowers may receive under the first round of Paycheck Protection Program funding from $10 million to $2 million.

Section 108. Increased Ability for Paycheck Protection Program Borrowers to Request an Increased in Loan Amount due to Updated Regulations. This section allows borrowers whose loan calculations have increased due to changes in interim final rules to work with lenders to alter their loan value regardless of whether the loan has been fully disbursed or if Form 1502 has already been submitted.

Section 109. Calculation of Maximum Loan Amount for Farmers and Ranchers under the Paycheck Protection Program. This section establishes a specific loan calculation for the first round of Paycheck Protection Program for farmers and ranchers who operate as a sole proprietor, independent contractor, self-employed individual, who report income and expenses on a Schedule F, and was in business during on February 15, 2019 through June 30, 2019. These entities may utilize their gross income in 2019 as reported on a Schedule F. Lenders may recalculate loans that have been previously approved to these entities if they would result in a larger loan.

Section 110. Farm Credit System Institutions. This section allows Farm Credit System Institutions to be eligible to make loans under the Paycheck Protection Program. It also allows for a zero risk weight for Paycheck Protection Program loans and aligns eased requirements for Farm Credit System Institutions with those of other Paycheck Protection Program lenders. Further, it ensures these smaller asset institutions have access to set-asides.

Section 111. Definition of a Seasonal Employer. This section defines a seasonal employer to be an eligible recipient which: (1) operates for no more than seven months in a year, or (2) earned no more than 1/3rd of its receipts in any six months in the prior calendar year.

Section 112. Changes to the 7(a) Loan Guaranty Program for Recovery Sector Business Concerns. This section improves the terms of 7(a) loans for seasonal businesses and businesses located in small business low-income census tracts.

- Eligibility. Eligible businesses must:
    1. be a small business concern as defined by the SBA size standards;
    2. employ 500 or fewer employees; and
    3. demonstrate at least a 50 percent reduction in gross revenue in the first or second quarter of 2020 quarter relative to the same 2019 quarter; and
        A. be a seasonal employer seeking a loan not greater than $1 million; or
        B. have their principal place of business in, and at least 50 percent of their income derived from, a small business low-income census tracts subject to additional limitations in the tract's median family income.
    - Entities made ineligible by statute for Paycheck Protection Program Second Draw loans and any entity that received a second draw of Paycheck Protection Program are not eligible.
- Loan terms. In general, borrowers may receive a loan of up to 2X annual revenues, up to $10 million, with a maturity of up to 20 years at an interest rate of one percent to the borrower.
    - The formal interest rate on the loan is SOFR plus 300 basis points, with the SBA covering the spread between the borrower's one percent fixed interest rate.
    - The SBA's guarantee is 100 percent.
    - Allowable uses include working capital, acquisition of fixed assets, and refinancing existing indebtedness.
    - The credit elsewhere test is waived.
- Payment Deferral. The borrower would defer principal and interest payments for the first two years of the loan, and the Administrator would be given the authority to grant an additional two years deferment. The SBA would continue to make interest payments without regard for deferment.
- Application Deadline. Borrowers may apply for this loan until December 31, 2020.
- Fee Waiver. Fees to borrowers and lenders are waived.
- Secondary Market. No later than 60 days after enactment, the SBA must substantially reduce the barriers to sell loans on the secondary market.
- Lender Eligibility. The SBA must establish a process by which a Paycheck Protection Program lender would be eligible to make these loans.
- Lender compensation. The Administrator is authorized to reimburse a lender for three percent of the principal amount of the loan up to $350,000 and one percent of the principal thereafter.
- Standard Procedure. Directs the SBA to allow lenders to approve loans made under this paragraph utilizing existing program guidance and standard operating procedure, to the maximum extent possible, as the standard SBA 7(a) program.

Section 113. Eligibility of 501(c)(6) Organizations for Loan Under the Paycheck Protection Program. This section would expand eligibility to receive a Paycheck Protection Program loan to include the following organizations:

1. 501(c)(6) organizations if,
    a. the organization does not receive more than 10 percent of receipts from lobbying;

    b. the lobbying activities do not comprise more than 10 percent of receipts;
    c. the organization has 50 or fewer employees; and
    d. the covered loan is not more than $500,000.
2. Chambers of Commerce that are 501(c)(6) organizations with 300 or fewer employees; and
3. Destination Marketing Organization that are 501(c)(6) organizations, quasi-government entities, or political subdivisions of a state or local government with 300 or fewer employees.

Section 114. Prohibition on Use of Loan Proceeds for Lobbying Activities. This section prohibits any eligible entity from using proceeds of the covered loan for lobbying activities, as defined by 2 U.S.C. 1602.

Section 115. Effective Date; Applicability. Amendments made by this bill shall apply to Paycheck Protection Program loans as if included in the CARES Act.

Section 116. Bankruptcy Provisions. This section would establish a special procedure in the bankruptcy process if the Administrator determines certain small business debtors are eligible for Paycheck Protection Program loans. It requires court approval for Paycheck Protection Program loans to these debtors and requires any such loan be given a superpriority claim in the bankruptcy process, providing additional protection to taxpayers and participating banks. The provisions in this section would take effect only upon a written determination by the Administrator that certain small business debtors are eligible for Paycheck Protection Program loans and would sunset two years from the date of enactment.

Section 117. Conflicts of Interest. This section would require the President, Vice President, the head of an Executive department, or a Member of Congress as well as their spouse, child, son-in-law, or daughter-in-law to disclose this status when receiving Paycheck Protection Program, Paycheck Protection Program Second Draw, and Recovery Sector loans.

<u>Title II. Small Business Programs Generally.</u>
Section 121. Small Business Investment Company Program. This section amends Part A of Title III of the *Small Business Investment Act of 1958* such that it establishes the Small Business and Domestic Production Recovery Facility that allows for the following:

Section 321. Small Business Growth and Domestic Production Investment Facility.
- <u>Definitions.</u> This section defines eligible small businesses that participating SBICs can invest in and allows the SBA to consider bank-owned, non-levered applicants for this facility. Eligible small businesses include small businesses otherwise meeting the SBA's size standards and which (1) meet the revenue reduction requirements for PPP; (2) are a manufacturing business; or (3) are located in a small business low-income census tract.
- <u>Establishment.</u> Requires the Administrator to establish a facility to carry out this section.
- <u>Applications.</u> Allows any SBIC to submit an application to participate in this facility and outlines application requirements.
- <u>Selection of Participating Investment Companies.</u> This section would require the Associate Administrator to make a determination on an applicant no later than 60 days

after receiving the application. Selection criteria includes, the likelihood the applicant will either meet its financial goals, create and preserve jobs, recover output lost due to the pandemic, increase supply chain resiliency, and aid in the economic development of small business low-income census tracts.

  - Provisional Approval. The SBA would be able to provide provisional approval to applicants, which shall not exceed 12 months.
  - Exceptions to Application for New Licensees. The Administrator may reduce requirements for investment companies to encourage participation in the new facility.

- Commitments and SBIC Bonds**.** The Administrator is authorized to make commitments to a participating SBIC and purchase equity-like bonds from a participating SBIC.
  - SBIC Bond Terms. Bonds purchased by the Administrator under this section shall have the following terms and conditions:
    - A term of at least 15 years with an interest rate of up to two percent; interest shall accrue on the bond rather than require cash interest payments
    - The Administrator will participate in the SBICs profits at a rate of 1/3 of the commitment that is approved divided by the commitment approved plus regulatory capital.
    - The Administrator will receive up to two percent interest from the SBIC's commitment, while the managers of the SBIC will receive a maximum interest of 25 percent minus the interest paid to the Administrator.
    - The Administrator must receive all interest payments on bonds committed before an SBIC may distribute capital (including profits) to investors or fund managers.
    - If a participating SBIC defaults, the Administrator will receive any unpaid returns or interest prior to the company's investors or managers.
    - The Administrator may directly commit or commit to purchase bonds from an SBIC up to a maximum that is the lesser of 2x the SBIC's regulatory capital and $200 million.
    - Any commitment by Administrator to purchase bonds will remain available to be sold by an SBIC for four years.
    - Until the Administrator has determined that the small business sector has recovered from the COVID-19 pandemic, 50 percent of dollars invested by SBICs under this program must be invested in COVID-19 recovery small businesses and critical supply chain businesses. Additionally, SBICs must invest a portion of their capital under this program in business owned by socially disadvantaged individuals.
- Profits and Distribution Fees. The interest paid to the managers of a participating SBIC cannot exceed 25 percent of net profits minus the interest of the Administrator and is separate from any accrued profits of the SBIC. Any interest payments in excess of that percentage will be repaid to the Administrator and the SBIC.
  - The Administrator must be paid in the same way as the investors of a participating SBIC and must be in accordance with SBA policies and regulations. The SBIC must treat the Administrator as if it were an investor.
  - The Administrator may not change participating SBICs fees outside of those consistent with the licensing process.

    - Any losses on bonds will not be offset by fees or other charges by the SBIC.
- Protégé Program. The Administrator shall establish a Pathway Protégé Program to provide protégé SBICs with technical assistance from mentor SBICs.
- Evaluation of Compliance. The Administration is required to ensure participating SBICs are in compliance with all applicable requirements.
- Loss limiting Fund. This section establishes the procedure of the revolving grant fund at the Treasury. The fund would be replenished by the capital returned by participating SBIC's investments in the facility following a one-time appropriation.
- Application of Other Sections. This section would ensure that SBICs are subject to comply with penalties and prohibitions on unlawful activities established in the *Small Business Investment Act of 1958.*
- Authorization of Appropriations. This section authorizes the appropriation of $10 billion to support this program.
- Approval of Bank-owned, Non-leveraged Applicants**.** This section would require the administrator to review and approve or disapprove of applications by non-bank, non-levered applicants within 45 days of receiving the application.
- Electronic Submissions. This section allows documents under this title to be submitted electronically, including the use of electronic signatures.

Title III. Appropriations

Section 131. Commitment Authority and Appropriations.

- Commitment Authority. This allows the Administrator to make commitments for loans made under the Paycheck Protection Program and Second Draw Loans beginning on February 15, 2020 through December 31, 2020 at $749 billion. It further allows commitments for Recovery Sector Loans beginning on February 15, 2020 through December 31, 2020 at $100 billion. It also separates SBA's traditional 7(a) loan program authorization from the Paycheck Protection Program, Second Draw, and Recovery Sector Loans.
- Direct Appropriations. This would rescind $100 billion in previously appropriated funds from the CARES Act and the Paycheck Protection Program and Health Care Enhancement Act and appropriate $190 billion in funds for the Paycheck Protection Program and Second Draw Loans, $57.7 billion for Recovery Sector Loans, and $10 billion for the Small Business Growth and Domestic Production Investment Facility.
- Emergency Designation**.** This language designates the funds appropriated in this section as an emergency requirement and exempts them from Pay-As-You-Go Act requirements.