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APPENDIX A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
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No. 24-30170

SEVILLE INDUSTRIES, L.L.C.,

Plaintiff—Appellant,

versus

UNITED STATES SMALL BUSINESS ADMINISTRATION; ISABELLA CASILLAS GUZMAN; JANET YELLEN,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:22-CV-6229

Before CLEMENT, OLDHAM, and WILSON, *Circuit Judges*. ANDREW S. OLDHAM, *Circuit Judge*:

Seville Industries challenges the Small Business Administration's decision not to forgive the entirety of its PPP loan. The question presented is whether the CARES Act's definition of "payroll costs" entitles businesses to count money paid to independent contractors. It does not, so we affirm.

I

A

1

Congress enacted the Small Business Act of 1953 in Title II of a broader statute. *See* Pub. L. No. 83-163, 67 Stat. 230, 232 (1953) (codified as amended at 15 U.S.C. §§ 631 *et seq*.). In 1958, Congress turned Title II into the freestanding Small Business Act. *See* Pub. L. No. 85-536, 72 Stat. 384 (1958). The Small Business Act established the Small Business Administration ("SBA"). *See* 15 U.S.C. § 633(a). The SBA's statutory purpose is to "aid, counsel, assist, and protect insofar as is possible the interests of small-business concerns in order to preserve free competitive enterprise." *SBA v. McClellan*, 364 U.S. 446, 447 (1960) (quoting 67 Stat. at 232).

The SBA's main way of aiding small businesses is by financing and guaranteeing private loans. *See* 15 U.S.C. § 636(a). These so-called "Section 7(a) loans"—named for the provision's original location in the Small Business Act, *see* 72 Stat. at 387—are the SBA's "flagship loan program." ROBERT JAY DILGER, CONG. RSCH. SERV., R41146, SMALL BUSINESS ADMINISTRATION 7(A) LOAN GUARANTY PROGRAM 1 (2020), https://perma.cc/S22J-5LGS. Typically, the SBA "prefers to guarantee private loans rather than to disburse funds directly" to businesses. *United States*

v. Kimbell Foods, Inc., 440 U.S. 715, 719 n.3 (1979) (citing 15 U.S.C. § 636(a)(2)). In practice, this means the SBA guarantees a portion of a small-business loan that is issued and serviced by a private lender. If the small business defaults, then the SBA is required to "purchase its portion of the outstanding balance, upon demand" by the private lender. 13 C.F.R. § 120.2(a)(2) (2025). These "SBA-backed loans make it easier for small businesses" to "get funding by setting guidelines for loans and reducing lender risk." *Loans*, U.S. SMALL BUS. ADMIN., https://perma.cc/T8TJ- SY3N.

The SBA also has rulemaking power. *See* 15 U.S.C. § 634(b). The Small Business Act authorizes the SBA Administrator to "make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter." *Id.* § 634(b)(6). The Act further authorizes the Administrator to "take any and all actions . . . when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this chapter." *Id.* § 634(b)(7).

2

In March 2020, "the COVID-19 pandemic ground economic activity across the country to a near standstill." *Ramey & Schwaller, LLP v. Zions Bancorporation NA*, 71 F.4th 257, 258 (5th Cir. 2023). In response, on March 27, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020). The CARES Act provided trillions of dollars in emergency assistance to Americans. Among other things, it aimed "to help small businesses keep

workers employed during the crisis," *Ramey & Schwaller*, 71 F.4th at 258, by providing forgivable, low-interest, federally guaranteed loans to "keep employees on the payroll," *Camelot Banquet Rooms, Inc. v. SBA*, 24 F.4th 640, 644 (7th Cir. 2022).

The CARES Act aimed to protect payrolls by creating the Paycheck Protection Program ("PPP"). *See* Pub. L. No. 116-136, §§ 1102, 1106, 134 Stat. at 286 (Title I—Keeping American Workers Paid and Employed Act). Congress "assigned [the PPP's] implementation" to the SBA. *Ramey & Schwaller*, 71 F.4th at 258. The PPP authorized the SBA to "guarantee covered loans under the same terms, conditions, and processes as a loan made under" the usual Section 7(a) mechanism. 15 U.S.C. § 636(a)(36)(B). Two additional features of the PPP are relevant here. First, § 1102 of the CARES Act expanded the SBA's Section 7(a) loan program. *See id.* § 636(a)(36). Second, § 1106 of the CARES Act provided for the forgiveness of these government-guaranteed loans issued under the PPP.

First, just like regular Section 7(a) loans, "PPP loans were made by participating private lenders but guaranteed by the federal government." *Ramey & Schwaller*, 71 F.4th at 258. But unlike ordinary Section 7(a) loans, PPP loans were available not only to small businesses but also to independent contractors, sole proprietors, and other eligible self-employed individuals. *See* 15 U.S.C. § 636(a)(36)(D)(i), (ii). The PPP expanded the eligibility for a small business to include any eligible entity with 500 employees or fewer. *Compare* 13 C.F.R. § 121.301(a), *with* 15 U.S.C. § 636(a)(36)(D)(i). And it expanded the number of qualified lending institutions beyond the

preexisting Section 7(a) lenders. *See id.* § 636(a)(36)(F)(iii).

The PPP allowed eligible applicants to borrow money up to a "maximum loan amount" using a formula based on its "payroll costs incurred" the previous year, in all events capped at $10 million. *Id.* § 636(a)(36)(E). That key term, "payroll costs," is statutorily defined: "[T]he term 'payroll costs' . . . means . . . the sum of payments of any compensation with respect to employees . . . and . . . the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation." *Id.* § 636(a)(36)(A)(viii). Once obtained, PPP loan proceeds could be used only for specified expenses such as payroll, mortgage interest, rent, utilities, and various employee benefits. *Id.* § 636(a)(36)(F)(i). Ultimately, the PPP made "$659 billion of government-guaranteed loans available to qualified small businesses." *In re Hidalgo Cnty. Emergency Serv. Found.*, 962 F.3d 838, 840 & n.1 (5th Cir. 2020).

Second, PPP loans are generally forgivable in whole or in part. *See generally* 15 U.S.C. § 636m. PPP borrowers are eligible for loan forgiveness in an amount equal to the costs they incurred on the specified expenses. *See id.* § 636m(b)(1)–(8). To secure forgiveness, PPP borrowers must specify "the number of full-time equivalent employees on payroll and pay rates" and certify that, *inter alia*, "the amount for which forgiveness is requested was used to retain

employees." *Id.* § 636m(e)(1), (3).[1] But the statute limits the amount of loan forgiveness available in a few ways. *See id.* § 636m(d). For example, the amount of forgiveness cannot exceed the loan principal. *See id.* § 636m(d)(1). The amount of forgiveness is reduced proportionately with how much a PPP borrower reduced the number of employees on its payroll. *See id.* § 636m(d)(2). And the amount of forgiveness is reduced by the amount the PPP borrower cut its employees' wages beyond 25 percent. *See id.* § 636m(d)(3).

To ensure speedy administration of the PPP during the early stages of the pandemic, the CARES Act required the SBA to implement the program within 15 days of the Act's enactment. *See id.* § 9012; *see also In re Gateway Radiology Consultants, P.A.*, 983 F.3d 1239, 1262 (11th Cir. 2020) (describing this timeframe as "practically warp speed for regulatory action"). To achieve that speed, Congress gave the SBA emergency rule-making authority exempted from the usual notice-and-comment requirements of the APA. *See* 15 U.S.C. § 9012.

3

Under that emergency rulemaking authority, the SBA issued an interim final rule implementing the PPP within its 15-day deadline. *See* 85 Fed. Reg. 20811, 20811 (Apr. 15, 2020) (codified at 13 C.F.R. pt. 120) ("IFR"). The IFR was posted on the SBA and Treasury websites on April 2, 2020; was effective April

[1] Note that "payroll costs" has the same statutory definition for loan forgiveness as it does for determining the maximum loan amount in the first instance. 15 U.S.C. § 636m(a)(12) (cross-referencing id. § 636(a)(36)).

15, 2020; and applied to PPP applications through June 30, 2020, or until PPP funds were exhausted. *See ibid.* The IFR explained the PPP loan eligibility and application requirements to potential borrowers and detailed the responsibilities of private lenders under the streamlined PPP process. *Id.* at 20812–16.

Relative to the typical Section 7(a) loan process, that streamlined process simplified the lenders' underwriting obligations. *See id.* at 20815. It allowed private lenders "to rely on certifications of the borrower in order to determine eligibility" and "specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness." *Id.* at 20812. And in addition to all preexisting Section 7(a) lenders, the IFR authorized new qualified lenders to make PPP loans, including all "federally insured depository institution[s]" and "federally insured credit union[s]." *Id.* at 20815.

Given the hurry to get cash in workers' hands during those early days of the pandemic, the IFR ensured applicants were "informed o[f] how to apply for a loan and the terms of the loan . . . as soon as possible." *Id.* at 20811. The IFR explained that the maximum loan amount would be "calculate[d] using a payroll-based formula specified in the Act" as discussed above. *Id.* at 20812. It clarified that "[p]ayroll costs consist of compensation to employees" in various forms and, "for an independent contractor or sole proprietor," they consist of "wages, commissions, income, or net earnings from self-employment." *Id.* at 20813. It told applicants that independent contractors "do not count for purposes of a borrower's PPP loan calculation" because they "have the ability to apply for a PPP loan on their own." *Ibid.*

Same for loan forgiveness. *Id.* at 20814. And the IFR emphasized the CARES Act's "overarching focus on keeping workers paid and employed." *Ibid.*

The PPP's rapid implementation and reliance on self-certification in the early days of the pandemic made it a target for fraud. A July 2021 GAO report noted that the program had "limited . . . safeguards" that "resulted in improper payments and fraud risks." GOV'T ACCOUNTABILITY OFF., PAYCHECK PROTECTION PROGRAM: SBA ADDED PROGRAM SAFEGUARDS, BUT ADDITIONAL ACTIONS ARE NEEDED 2 (2021), https://perma.cc/74MC-535D. Relying on its power under 15 U.S.C. § 634(b)(6), (7), and (11) to audit and investigate compliance with the Act and its regulations, the SBA launched a system of PPP loan review via interim final rule. *See* 85 Fed. Reg. 33010 (June 1, 2020). Under that system, the SBA would deny a PPP borrower's loan forgiveness application if it determined that the borrower was ineligible for the PPP loan amount in the first place. *Id.* at 33012.

B

Seville Industries, LLC is based in Abbeville, Louisiana. It provides "products, services, and work crews to businesses operating in the oil and gas sector." ROA.143. Seville employed 58 W-2 employees and 111 independent contractors when the COVID-19 pandemic started.

On April 7, 2020, Seville applied for a PPP loan from Loan Source Inc., an SBA-approved private lender. On its application, Seville stated that it had 53 employees and an average monthly payroll of $1,271,193. This apparently yielded a loan amount of

$2,578,351. [2] The payroll calculation on Seville's application included compensation it paid to independent contractors, whom it did not count among its "employees." Two days later, the SBA approved Seville's PPP application, and on April 17, Loan Source disbursed the money to Seville.

Just over a year later, in August 2021, Seville applied for full forgiveness of its PPP loan. Three days later, the SBA notified Loan Source that it was reviewing Seville's PPP loan because the maximum loan for 53 employees should have been $1,104,149—about $1.5 million less than Seville had received. It requested a copy of Seville's loan application along with supporting documentation and analysis. That September, the SBA requested additional information. After getting it in February 2022, the SBA notified Loan Source that it was considering a full denial of Seville's PPP loan forgiveness application because Seville included payments to independent contractors in its calculation of payroll costs.

On March 28, 2022, the SBA issued to Seville its PPP Final SBA Loan Review Decision. The SBA determined that Seville was entitled only to partial forgiveness for the amount of the PPP loan based on money paid to employees rather than to independent contractors. The next day, the SBA reimbursed Seville $687,508.64 in principal and $13,392.29 in interest.

Seville appealed the SBA's decision to the SBA Office of Hearings and Appeals ("OHA"). The OHA

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[2] Although not at issue in this litigation, the amount calculated for Seville's total PPP loan was incorrect in a few respects, which Seville admits.

denied the appeal. Seville petitioned for reconsideration, which the OHA also denied.

In December 2022, Seville timely appealed the SBA's final agency decision to the Western District of Louisiana. *See* 13 C.F.R. § 134.1211(g) ("Final decisions may be appealed to the appropriate Federal district court only."); *Seville Indus. LLC v. U.S. Small Bus. Admin.*, No. 22-CV-06229, 2024 WL 697592, at *3 (W.D. La. Feb. 20, 2024). The district court granted summary judgment to the SBA. *Id.* at *8.

Seville timely appealed to our court. Our review is *de novo. Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

II

The question in this case is whether the CARES Act's reference to "payroll costs," 15 U.S.C. § 636(a)(36)(A)(viii), allowed Seville to borrow a federally guaranteed loan for $1.5 million at 1 percent interest on the basis of money it paid to independent contractors, spend not a single cent of it on keeping independent contractors working during the pandemic, and then have those loans forgiven on the back end. The answer is no. That conclusion is supported by (A) the statute's text and structure and (B) the statutory scheme more generally. (C) Seville's contrary reading is unpersuasive.

A

"In matters of statutory interpretation, text is always the alpha" and "omega." *In re DeBerry*, 945 F.3d 943, 947 (5th Cir. 2019). Here is the operative statutory text:

The term "payroll costs"–

(I) means–

(aa) the sum of payments of any compensation with respect to employees that is a–

— (AA) salary, wage, commission, or similar compensation;

— (BB) payment of cash tip or equivalent;

— (CC) payment for vacation, parental, family, medical, or sick leave;

— (DD) allowance for dismissal or separation;

— (EE) payment required for the provisions of group health care or group life, disability, vision, or dental insurance benefits, including insurance premiums;

— (FF) payment of any retirement benefit; or

— (GG) payment of State or local tax assessed on the compensation of employees; and

— (bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than $100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred[.]

15 U.S.C. § 636(a)(36)(A)(viii).

The provision's "text and structure . . . indicate that the language preceding the em dash[] distributes

throughout the statutory sentence." *United States v. Palomares*, 52 F.4th 640, 650 (5th Cir. 2022) (Oldham, J., concurring). So the phrase "the term 'payroll costs' means" distributes to "every item on the ensuing list." *Pulsifer v. United States*, 601 U.S. 124, 134 (2024). The provision thus reads:

> (aa) [The term "payroll costs" *means*] the sum of payments of any compensation with respect to employees . . . ; and
>
> (bb) [The term "payroll costs" *means*] the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation.

15 U.S.C. § 636(a)(36)(A)(viii) (emphasis added).

The statute therefore tells us what "'payroll costs' . . . means" for businesses with employees and for independent contractors. "Means," of course, indicates a definition. *See Mean*, WEBSTER'S NEW INTERNATIONAL DICTIONARY 1519 (2d ed. 1934; 1950) ("WEBSTER'S SECOND") ("To have in mind as the object, application, signification, or the like."). So for businesses or other organizations with a traditional payroll, subsection (aa) defines "payroll costs" as "the sum of payments of any compensation with respect to employees" such as wages, tips, leave, severance, insurance, and retirement benefits. 15 U.S.C. § 636(a)(36)(A)(viii)(aa). "[A]nd" for entities *without* traditional payrolls, such as an independent contractor or sole proprietor, subsection (bb) defines "payroll costs" as "the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission,

income, net earnings from self-employment, or similar compensation." *Id.* § 636(a)(36)(A)(viii)(bb).

Subsection (bb) therefore defines payroll costs as the money *earned by* independent contractors or sole proprietors, not as the money *paid* to them by businesses. True, "in a vacuum," *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 20 (2018) (quotation omitted), a business like Seville could read "compensation to" as a reference to its outflow payments to independent contractors. But, as the SBA urges, the phrase "compensation to or income of a sole proprietor or independent contractor" is "most naturally read as a single integrated element," Red Br. at 25, referring to all the amounts *earned by* a self-employed person. That phrase's immediate "surrounding context," *Diaz v. United States*, 602 U.S. 526, 536 (2024), confirms that interpretation: The terms "wage, commission, income, net earnings from self-employment, or similar compensation" are all ways of capturing money earned by a self-employed person, not money spent by the business who hired him. *See Fischer v. United States*, 603 U.S. 480, 487 (2024) (explaining that "the canon of *noscitur a sociis* teaches that a word is given more precise content by the neighboring words with which it is associated" (quotation omitted)).

Consider also the article in the phrase "*a* sole proprietor or independent contractor," and contrast that with subsection (aa)'s reference to "compensation with respect to *employees*." 15 U.S.C. § 636(a)(36)(A)(viii)(aa), (bb) (emphases added); *see also Life Techs. Corp. v. Promega Corp.*, 580 U.S. 140, 151 (2017) (explaining the statutory distinction between "singular" and "plural" terms). That

deliberate difference further confirms that subsection (aa) encompasses one business's payments *out* to *multiple* employees while subsection (bb) describes the eligible money coming in for a *single* loan applicant who is self-employed. That distinction is hard to reconcile with the reality that a business can hire many independent contractors for any number of discrete or irregular tasks, as Seville in fact did.

The ordinary meaning of "payroll costs" supports this reading too. *See Delligatti v. United States*, 145 S. Ct. 797, 808 (2025) ("When choosing among interpretations of a statutory definition, the 'ordinary meaning' of the 'defined term' is an important contextual clue." (quoting *Bond v. United States*, 572 U.S. 844, 861 (2014))). "Payroll" has consistently referred to a business's regular employees who receive paychecks at regular intervals, not to independent contractors or others that the business may hire for a singular task or discrete set of jobs. *See, e.g., Payroll*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("The total compensation payable to a company's employees for one pay period."). *But see Independent Contractor*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Someone who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it."). True, subsection (bb) expands the traditional meaning of payroll costs so that self-employed individuals can also apply for paycheck protection under the CARES Act. But an emergency provision giving novel protections to self-employed individuals does not expand the ordinary meaning of payroll costs for traditionally structured businesses—a meaning reflected in the enumerated costs of subsection (aa).

B

Our interpretation of "payroll costs" comports with the rest of the CARES Act's statutory scheme. *See Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 275 (2023) ("[T]he Court must read the words Congress enacted in their context and with a view to their place in the overall statutory scheme." (quotation omitted)). That scheme presupposes that businesses *cannot* count payments to independent contractors (or sole proprietors) as payroll costs. Thus, Seville's interpretation introduces many asymmetries and incongruities with other provisions in the CARES Act. *See Jones v. Hendrix*, 599 U.S. 465, 479 (2023) ("We generally resist attributing to Congress an intention to render a statute so internally inconsistent." (quotation omitted)). Two bear emphasis.

First, the statute excludes from payroll costs "compensation of an employee whose principal place of residence is outside of the United States." 15 U.S.C. § 636(a)(36)(A)(viii)(II)(cc). But the statute does not make the same exclusion for payments to sole proprietors and independent contractors. Though not impossible, it would be freakish for the statute—which was aimed at "help[ing] small businesses keep workers employed during the crisis," *Ramey & Schwaller*, 71 F.4th at 258—to exclude foreign resident employees but include foreign resident independent contractors. Seville has no explanation for that asymmetry. Instead, the commonsense reading is that the statute does not exclude payments to foreign resident independent contractors because it does not contemplate including payments to any independent contractors *at all*.

Second, the reading we adopt also squares with the conditions of the loan forgiveness program. The amount of forgiveness to which a PPP borrower is entitled is based on its payroll costs. *See* 15 U.S.C. § 636m(b)(1). The forgiveness provision incentivizes businesses to use at least some PPP money to keep their employees on the payroll, as opposed to using it all on mortgage interest or rent. To do so, the statute proportionately limits the amount of loan forgiveness available to a business based on its "reduction in number of employees," *id.* § 636m(d)(2), or cuts it made to the "salary or wages of any employee" beyond 25 percent, *id.* § 636m(d)(3)(A). In other words, if small businesses fired too many employees or reduced wages during the pandemic, then the amount of their PPP loans eligible for forgiveness is reduced.

But the statute provides no corresponding limitation for cuts to independent contractors. Again, Seville has no explanation for this incongruity. It would make no sense for the statute to provide PPP loans at the outset based on a business's outflows to independent contractors, but then give full forgiveness on that borrowed money even if the business fired every single independent contractor. In fact, that is what happened here. At oral argument, Seville's counsel admitted that, out of the $1.5 million Seville borrowed based on its payments to independent contractors the previous year, it spent precisely $0 on keeping independent contractors working during the pandemic. Oral Arg. at 11:15–30.

C

Seville's contrary interpretation is unpersuasive. Seville accepts, as it must, that subsection (bb)

authorizes independent contractors to apply for their own loans. It nevertheless maintains that money spent on independent contractors could *also* be added to a business's payroll costs along with the items listed in subsection (aa). The SBA's interpretation, it alleges, improperly reads "and" to mean "or . . . in the so-called 'distributive' sense." Blue Br. at 19. Seville therefore reads "and" to denote the arithmetical addition of subsections (aa) and (bb). Thus, Seville would rewrite § 636(a)(36)(A)(viii) to say:

> The term "payroll costs"–
>
> (I) means [*the sum of*]–
>
> — (aa) the sum of payments of any compensation with respect to employees . . . ; and
>
> — (bb) the sum of payments of any compensation to or in- come of a sole proprietor or independent contractor[.]

But "and" cannot bear that weight in this statute. *Cf. Palomares*, 52 F.4th at 649 (Oldham, J., concurring) ("We do the law a disservice when we suggest that textualist exegeses are reducible to . . . hyper-literalist readings of the word *and*."). That is for five reasons.

First, as we have explained, the most natural reading reflects that Congress chose a two-part structure that distributes the word "means" across (aa) and (bb), providing two separate definitions of "payroll costs" for two different types of applicants. For businesses with traditional payrolls, subsection (aa) tells it what kinds of outflows it can count. For self-employed individuals, subsection (bb) tells it what kind of inflows it can count.

Second, Seville has no theory for what the word "means" does in the statute. "Means" does not denote numerical addition; it provides a definition. A dictionary will tell you that "iris" *means* (1) the goddess of the rainbow in the *Iliad*, (2) a rainbow, (3) "a rainbowlike play of colors," (4) part of the eyeball, (5) a notable asteroid in the asteroid belt, (6) a type of flower, (7) a "color, reddish-blue in hue," (8) a type of quartz, (9) a filmmaking device, (10) a photography device, and (11) a part of a butterfly. *Iris*, WEBSTER'S SECOND at 1310. But that is not to say that "iris" *means* the summation, addition, or total of a goddess, a rainbow, an asteroid, a flower, a filmmaking device, a butterfly, &c. Multiple definitions instead communicate that a phrase has different meanings in different situations. So too here.

Third, Congress knew how to say "the sum of" in the CARES Act when it wanted to. The first example is staring us in the face: Subsections (aa) and (bb) both tell applicants to calculate "the sum of" their elements. The CARES Act is chock full of other examples. For example, look at 15 U.S.C. § 636(a)(36)(E)(i)(I). There, Congress directed that a PPP borrower's maximum loan amount be calculated as "the sum of" items (aa) (payroll costs multiplied by 2.5) and (bb) (existing disaster-relief loan balance). Similarly, the maximum loan amount for a farmer or rancher without employees is calculated as "the sum of" items (aa) (2019 monthly gross income multiplied by 2.5) and (bb) (existing disaster-relief loan balance). *Id.* § 636(a)(36)(V)(ii)(I). And Congress specified the PPP loan forgiveness amount would be calculated as the "the sum of" a list of enumerated expenses. *Id.* § 636m(b)(1)–(8). Try as it might, Seville cannot write

the words "the sum of" into § 636(a)(36)(A)(viii)(I), which instead states only that "payroll costs" "means" (aa) and (bb). That omission shows borrowers are not supposed to sum up (aa) and (bb).

Fourth, if Congress wanted businesses to sum the elements of (aa) with the elements of (bb), why break subsection (I) into (aa) and (bb) at all? To communicate that meaning, the more natural organization would have been a single list of items constituting "payroll costs"—including employee payroll and payments to independent contractors—that every applicant (whether a business or self-employed individual) could add to its sum if applicable. Such a list would not need to repeat the phrases "wage," "commission," and "similar compensation" across subsections (aa) and (bb). Nor would it cap payments to employees and independent-contractor income in two separate sections, even though the cap is the same amount. *Compare id.* § 636(a)(36)(A)(viii)(II)(aa) (capping payroll costs attributed to the "compensation of an individual employee" at $100,000), *with id.* § 636(a)(36)(A)(viii)(I)(bb) (capping payroll costs countable by self-employed applicants at $100,000). Seville's interpretation explains none of this.

Fifth and finally, Seville's reading creates a "double dipping" problem. *Seville Indus.*, 2024 WL 697592, at *6. No one disputes that both small businesses and independent contractors could apply for PPP loans on their own. *See* 15 U.S.C. § 636(a)(36)(D)(i), (ii). But if both applied and small businesses could count in their "payroll costs" what they paid to independent contractors, that would "permit[] small businesses and their contractors to count the same amounts twice to obtain multiple loans." *Seville Indus.*, 2024 WL

697592, at *6. There is no principled reason to think Congress meant to double count money spent on independent contractors, especially in a statute that is otherwise rigorous about avoiding duplication. *See* 15 U.S.C. § 636(a)(36)(A)(viii)(II)(dd), (ee) (excluding from payroll costs sick and family leave wages that are already entitled to tax credits); *id.* § 636(a)(36)(G)(i)(IV) (requiring PPP loan applicants to certify that they have "not received amounts under this subsection for the same purpose and duplicative of amounts" already "applied for or received").

Seville argues that § 636(a)(36)(G)(i)(IV) solves its double dipping problem because it stops a small business and an independent contractor from borrowing based on the same payments. Not so. This provision requires each applicant to certify that it has not received a PPP loan already, not that no one else has. But even if the provision did apply in the way Seville contends, then a small business's loan based on what it paid to independent contractors would prevent those independent contractors from getting their own loans. That would be absurd: It would mean independent contractors would get no funds at all. No interpretation could be more "illogical," *Jones*, 599 U.S. at 480, or make less sense of the CARES Act.

In short, the statutory text, structure, and context all foreclose Seville's reading of the CARES Act.

III

We also reject Seville's two other claims.

First, Seville claims the IFR changed the meaning of "payroll costs." It did not; the term always excluded payments to independent contractors. The IFR was an interpretive rule that merely "advise[d] the public of

the agency's construction of the statutes and rules which it administers." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015) (quotation omitted). So the SBA's decision not to forgive Seville's loan is "no more retroactive in its operation than is a judicial determination construing and applying a statute to a case in hand." *Manhattan Gen. Equip. Co. v. Comm'r of Internal Revenue*, 297 U.S. 129, 135 (1936).

Second, Seville's equitable estoppel claim fails too. As an initial matter, Seville did not bring this claim in its complaint, so it was forfeited. Regardless, even assuming equitable estoppel *could* run against the Government, *see Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60 (1984) (leaving the issue open); *Knapp v. U.S. Dep't of Agric.*, 796 F.3d 445, 461 (5th Cir. 2015) (same), "claims for estoppel" against the Government "cannot be entertained where public money is at stake," *Off. of Personnel Mgmt. v. Richmond*, 496 U.S. 414, 427 (1990). But even if it could bring an equitable estoppel claim, Seville has not come close to showing "affirmative misconduct by the [G]overnment." *Knapp*, 796 F.3d at 461. Rather, it just disagrees (incorrectly) with the SBA about the meaning of "payroll costs." And it is far from clear that receiving a $1.5 million loan at 1 percent interest—far more than Seville was even entitled to—is a "substantial injury." *Ibid.*

In any event, the notion that Seville had the rug pulled from under it is untenable. Consider Seville's PPP application form. It asked Seville to provide its average monthly payroll and number of employees, and it required Seville to "certify in good faith" that it would "verify[] the number of full-time equivalent employees" on its "payroll." ROA.605. It required

Seville to certify that it "underst[oo]d that loan forgiveness w[ould] be provided for the sum of documented payroll costs." *Ibid.* The form's instructions listed what expenses could be included in payroll costs, and it provided a different list "for an independent contractor or sole proprietor." ROA.606. Nowhere did this form indicate that Seville could count what it paid to independent contractors.

* * *

A careful, commonsense reading of the CARES Act shows that Congress's design for the PPP was clear: "Payroll costs" do not include payments that small businesses made to independent contractors. The statute made low-interest loans available during the pandemic for small businesses to maintain their payrolls and for independent contractors to make up lost income. On the front end, Seville improperly counted its payments to independent contractors and borrowed too much money. Come forgiveness season, only the loans based on genuine payroll costs shall be redeemed.

AFFIRMED.

APPENDIX B

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED
November 11, 2025

Lyle W. Cayce
Clerk

No. 24-30170

SEVILLE INDUSTRIES, L.L.C.,

Plaintiff—Appellant,

versus

UNITED STATES SMALL BUSINESS ADMINISTRATION; ISABELLA CASILLAS GUZMAN; JANET YELLEN,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:22-CV-6229

ON PETITION FOR REHEARING

Before CLEMENT, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

SEVILLE INDUSTRIES LLC	**CIVIL DOCKET NO. 6:22-CV-06229**
VERSUS	
U.S. SMALL BUSINESS ADMINISTRATION, ET AL	**JUDGE DAVID C. JOSEPH**
	MAGISTRATE JUDGE CAROL B. WHITEHURST

MEMORANDUM RULING

Before the Court are two cross motions for summary judgment: (i) MOTION FOR SUMMARY JUDGMENT (the "Motion") [Doc. 23] filed by Plaintiff Seville Industries LLC ("Plaintiff" or "Seville") and (ii) CROSS MOTION FOR SUMMARY JUDGMENT (the "Cross Motion") [Doc. 29] filed by Defendants United States Small Business Administration ("SBA"), Isabelle Casillas Guzman,[1] and Janet Yellen[2] (collectively, "Defendants"). For the following reasons, Plaintiff's Motion is DENIED, and Defendants' Cross Motion is GRANTED.

[1] Isabelle Casillas Guzman is sued in her official capacity as the Administrator of the SBA.

[2] Janet Yellen is sued in her official capacity as the Secretary of the Treasury.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This lawsuit arises out of the Plaintiff's small business loan under the Paycheck Protection Program ("PPP"). The PPP was enacted by Congress on March 27, 2020, as part of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), a comprehensive aid package designed to provide trillions of dollars in emergency assistance to individuals, families, and health-care providers coping with the coronavirus pandemic. Pub. L. No. 116-136, 134 Stat. 281 (2020) ("CARES Act"). The PPP was specifically designed to help small businesses by providing forgivable federally guaranteed loans to maintain small business payrolls during the pandemic era economic shutdowns.[3] *See* SBA, Business Loan Program Temporary Changes; Paycheck Protection Program, Interim Final Rule, 85 Fed. Reg. 20,811, 20,811-12 (Apr. 15, 2020) ("First PPP IFR").

The SBA was enacted in 1958 to "aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns." Pub. L. No. 85-536, 72 Stat. 384 (1958) (codified as amended at 15 U.S.C. §631(a), *et seq*.); *see also* 15 U.S.C. § 633(a) (establishing the SBA). The SBA's primary mechanism for aiding small businesses is by financing private "Section 7(a) loans" under the Small Business Act. 15 U.S.C. § 636(a). Although the SBA guarantees these loans, they are typically issued by private lenders rather than through direct disbursals from the SBA. *Id.*; *United*

[3] The CARES Act made $659 billion of government-guaranteed loans available to qualified small businesses through the PPP. *In re Hidalgo Cnty. Emergency Serv. Found.*, 962 F.3d 838, 840 (5th Cir. 2020).

States v. Kimbell Foods, Inc., 440 U.S. 715, 719 n.3, 99 S. Ct. 1448, 59 L.Ed.2d 711 (1979). In addition to creating Section 7(a) loans, the Small Business Act authorizes the SBA Administrator to "make such rules and regulations as [s]he deems necessary" to implement the loan program. 15 U.S.C. § 634(b)(6); *Id.* at § 634(b)(7) (vesting the SBA Administrator with the authority to create rules and "take any and all actions ... when [s]he determines such actions are necessary or desirable in making, servicing, ... or otherwise dealing with or realizing on loans made under the provisions of [the Act]").

Section 1102(a)(2) of the CARES Act established the PPP as a temporary expansion of SBA's pre-existing business-loan authority by adding a new paragraph – Paragraph 36 – to Section 7(a), 15 U.S.C. § 636(a)(36). Importantly, the PPP was not created as a standalone program; instead it was added into Section 7(a), albeit with several of that subsection's general eligibility requirements relaxed. CARES Act, § 1102, 134 Stat. at 286 (amending § 7(a)). Section 636(a)(36)(B) expressly states that "[e]xcept as otherwise provided in this paragraph, the [SBA] may guarantee [PPP] loans under the same terms, conditions, and processes as [other] loan[s] made under" Section 7(a). *Id.* at § 636(a)(36)(B). Additionally, Section 1106 of the CARES Act, as amended, allows eligible recipients of PPP loans to obtain forgiveness of their loans in whole or in part. 15 U.S.C. § 636m(b)-(d). Under the CARES Act, the amount of forgiveness for which a PPP borrower is eligible is generally calculated as "the sum of" its "[p]ayroll costs" and the seven other categories of covered expenses incurred during the covered period. *Id.* § 636m(b); *see id.* at § 636m(a)(4). "[P]ayroll costs"

has the same meaning for loan-forgiveness purposes as for calculating a borrower's maximum loan amount. *Id.* at § 636m(a)(12).

It is clear from the text of the CARES Act and the implementing regulations that the PPP was to be quickly put into effect give the unprecedented national health and economic crisis. To that end, the CARES Act authorized the SBA to guarantee up to $349 billion in PPP loans during the initial three-month period ending on June 30, 2020. 15 U.S.C. § 636(a)(36)(A)(ii)-(iii), (B). Congress also streamlined Section 7(a) loan-origination requirements for PPP borrowers by, for example, eliminating borrower collateral and personal loan-guarantee requirements. *Id.* at § 636(a)(36)(J). The SBA also permitted additional qualified lending institutions that were not already accredited Section 7(a) lenders to participate in the PPP and mandated that all PPP lenders be given "delegated authority" to make and approve PPP loans without prior SBA review. *Id.* at § 636(a)(36)(F)(ii)(I), (iii). Congress gave the SBA only 15 days to issue rules, 15 U.S.C. § 9012, described as "warp speed for regulatory action." *See In re Gateway Radiology Consultants, P.A.*, 983 F.3d 1239, 1262 (11th Cir. 2020). Recognizing that the rulemaking deadline would otherwise be impossible, Congress freed the SBA from the typical notice requirements associated with the federal rulemaking process. 15 U.S.C. § 9012.

Pursuant to its congressionally mandated authority under 15 U.S.C. § 9012, the SBA issued several interim final rules ("IFRs") implementing the PPP. The stated purpose of the First IFR was to "outline[ ] the key provisions of the PPP" by setting forth borrower eligibility and application requirements for

PPP loans, 85 FR 20,812-15 (§ III(2)), and lenders' responsibilities under a streamlined PPP underwriting process. *Id.* at 20,815-16 (§ III(3)). Relevant here, the First IFR also explained: (i) that under the terms of the CARES Act, the maximum size of a PPP loan was calculated "using a payroll-based formula specified in the Act," *Id.* at 20,812 (§ III(2)(d) and (e)); (ii) that "payroll costs" for this purpose consisted of compensation to employees residing principally in the United States, "and for an independent contractor or sole proprietor," compensation in the form of wages, commissions, income, or net earnings from self-employment, *Id.* at 20,813 (§ III(2)(f)); and (iii) that independent contractors "do not count for purposes of a borrower's PPP loan calculation" or "PPP loan forgiveness" because they "have the ability to apply for a PPP loan on their own" [hereinafter, the "Independent Contractor Rule" or "ICR"], *Id.* at 20,813, 20,814 (§ III(2)(h), (p)). The First IFR was posted on the SBA and Treasury websites on April 2, 2020, with an effective date of April 15, 2020, and expressly "applie[d] to applications submitted under the [PPP] through June 30, 2020, or until funds made available for this purpose are exhausted." *Id.* at 20,811.

On April 7, 2020, Plaintiff applied for a PPP loan in the amount of $2,578,351.00 from an SBA-approved lender, Loan Source Inc. (the "Lender"). [Doc. 22-6].[4]

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[4] Plaintiff argues it was permitted to borrow the maximum amount under the CARES Act. The CARES Act defines "maximum loan amount" as:

In calculating its "payroll costs" on the loan application, Plaintiff included payments it had made to its independent contractors. [Doc. 22-22, pp. 3-4]. The Lender submitted Plaintiff's application to the SBA for approval, and the SBA approved the full amount requested on April 9, 2020.

On August 20, 2021, Plaintiff applied for full forgiveness of its PPP Loan. [Doc. 22-7, pp. 1-3]. On

---

> **(E) Maximum Loan Amount**
>
> Except as provided in subparagraph (V), during the covered period, with respect to a covered loan, the maximum loan amount shall be the lesser of—
>
> (i)(I) the sum of—
>
> (aa) the product obtained by multiplying—
>
> (AA) the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made, except that an applicant that is a seasonal employer shall use the average total monthly payments for payroll for any 12-week period selected by the seasonal employer between February 15, 2019, and February 15, 2020; by (BB) 2.5; and
>
> (bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020, and ending on the date on which covered loans are made available to be refinanced under the covered loan; or
>
> [. .]
>
> (ii) $10,000,000.

15 U.S.C.A. § 636(E).

March 28, 2022, the SBA issued its PPP Final SBA Loan Review Decision, in which the SBA determined that the Plaintiff was only entitled to partial forgiveness, as follows:

> SBA has determined that the borrower was ineligible for the PPP loan amount received. The reason(s) for SBA's decision is as follows: After review of the documentation provided, the SBA has recalculated the borrower's maximum eligible loan amount and thus limited forgiveness to this eligible amount. … Total payroll costs for the reference period equal $3,300,041.47, resulting in an average monthly payroll cost of $275,003.46 and a maximum eligible loan amount of $687,508.64.
>
> Based on the above stated reason(s), SBA has determined that forgiveness in the amount of $687,508.64 is appropriate.

[Doc 22-3, pp. 1-2].

On March 29, 2022, the SBA remitted to the Plaintiff $687,508.64 in principal and $13,392.29 in interest. [Doc. 22-20, p. 82]. On April 29, 2022, Plaintiff appealed the SBA's decision to the SBA Officer of Hearings and Appeals ("OHA"), which denied the Plaintiff's appeal. [Doc. 22-22]. Plaintiff filed a petition for reconsideration [Doc. 22-23], which was denied on October 24, 2022. [Docs. 22-23, 22-25]. In accordance with 13 C.F.R. § 134.1211(g), Plaintiff timely filed an appeal of the SBA's final agency decision in this Court. [Doc. 1].

On December 22, 2022, the Plaintiff filed a Complaint for declaratory and injunctive relief against the SBA, seeking the following: (i) a declaration that

the ICR is arbitrary, capricious, and contrary to law, and that the SBA therefore erred by excluding contractor pay from the calculation of the Plaintiff's maximum loan amount and granting only partial forgiveness; [5] (ii) a declaration that retroactive application of the ICR violates the CARES Act and the Administrative Procedures Act ("APA") and therefore Plaintiff's PPP loan should be fully forgiven; (iii) an order vacating the OHA's decision and remanding with instructions to grant full forgiveness of Plaintiff's PPP loan on grounds the SBA failed to engage in a notice-and-comment procedure with regard to the ICR; and (iv) suspension of the OHA final decision and deferment of the Plaintiff's PPA loan until resolution of this matter. [Doc. 1].

Plaintiff filed the instant Motion on September 22, 2023 [Doc. 23]. Defendants filed their Motion for Summary Judgment on November 6, 2023 [Doc. 25] and filed their supporting memorandum the following day, including their opposition to the Plaintiff's brief in the same document. [Doc. 9]. On December 21, 2023, Plaintiff filed its opposition to the Defendants' Motion, combined with a reply in connection with its own motion. [Doc. 38]. On January 12, 2024, Defendants filed a Reply to Plaintiff's Response to Defendants' Cross Motion for Summary Judgment. [Doc. 48].

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[5] In its Complaint, the Plaintiff originally sought the issuance of a permanent injunction barring Defendants from applying the ICR to any loan forgiveness request nationwide. [Doc. 1, p. 20]. However, in its Motion for Summary Judgment, Plaintiff withdraws this request for relief. [Doc. 23-1, p. 1 n.1].

All issues having been fully briefed by the parties, the Motions are now ripe for ruling.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Summary judgment "is particularly appropriate in cases in which the court is asked to review or enforce a decision of a federal administrative agency." *Girling Health Care, Inc. v. Shalala*, 85 F.3d 211, 214–15 (5th Cir. 1996). To prevail, the moving party bears the initial burden of demonstrating "there is no genuine issue as to any material fact" and that it "is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Facts are considered "material" only if they "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

On cross-motions for summary judgment, a court examines each party's motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party. *White Buffalo Ventures, LLC v. Univ. of Texas at Austin*, 420 F.3d 366, 370 (5th Cir. 2005). "Cross-motions for summary judgment will not, in themselves, warrant the court in granting summary judgment unless one of the parties is entitled to judgment as a matter of law on facts that are not genuinely disputed." *Joplin v. Bias*, 631 F.2d 1235, 1237 (5th Cir. 1980). Nonetheless, cross- motions for summary judgment may be probative of the absence of a factual dispute when they reveal a basic agreement concerning what legal theories and material facts are

dispositive. *Newell-Davis v. Phillips*, 592 F.Supp.3d 532, 545 (E.D. La.), *aff'd*, 55 F.4th 477 (5th Cir. 2022), *opinion withdrawn and superseded on denial of reh'g*, 2023 WL 1880000 (5th Cir. Feb. 10, 2023), *cert. denied*, 144 S. Ct. 98, 217 L. Ed. 2d 25 (2023), *and aff'd*, No. 22-30166, 2023 WL 1880000 (5th Cir. Feb. 10, 2023), *and cert. denied*, 144 S. Ct. 98, 217 L. Ed. 2d 25 (2023)

LAW AND DISCUSSION

In its Motion, the Plaintiff asks this Court to vacate and set aside the ICR and instruct the SBA to grant full forgiveness of the Plaintiff's PPP loan. Defendants seek a judgment affirming the SBA's decision as a matter of law. For the reasons that follow, the Court enters summary judgment in favor of Defendants.

I. The SBA's Decision was not Arbitrary and Capricious

When an agency acts, it must "reasonably consider[ ] the relevant issues and reasonably explain[ ]" its actions. *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423, 141 S. Ct. 1150, 1158, 209 L. Ed. 2d 287 (2021); Michigan v. EPA, 576 U.S. 743, 750, 752, 135 S. Ct. 2699, 192 L. Ed. 2d 674 (2015) ("[A]gency action is lawful only if it rests on a consideration of the relevant factors" and "important aspect[s] of the problem." (quotation omitted). Judicial review under this standard is deferential, and a court may not substitute its own policy judgment for that of the agency. *Prometheus Radio Project*, 592 U.S. at 423. Courts must carefully ensure that "the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *Id.* at 423. This Court "must set aside any action premised

on reasoning that fails to account for 'relevant factors' or evinces 'a clear error of judgment.'" *Univ. of Tex. M.D. Anderson Cancer Ctr. v. HHS*, 985 F.3d 472, 475 (5th Cir. 2021), *quoting Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378, 109 S. Ct. 1851, 104 L. Ed. 2d 377 (1989).

The Plaintiff argues that the SBA's decision was arbitrary and capricious because the ICR violates the CARES Act and the SBA's Loan Application Form 2483, and because the SBA retroactively applied the ICR to the Plaintiff's PPP loan. The parties' dispute focuses on an interpretation of the term "payroll costs" under Section 15 U.S.C. § 636(a)(36)(A)(viii) of the CARES Act. This provision states:

> (viii) the term "payroll costs"—
>
> (I) means
>
> (aa) the sum of payments of any compensation with respect to employees that is a—
>
> (AA) salary, wage, commission, or similar compensation;
>
> (BB) payment of cash tip or equivalent;
>
> (CC) payment for vacation, parental, family, medical, or sick leave;
>
> (DD) allowance for dismissal or separation;
>
> (EE) payment required for the provisions of group health care or group life, disability, vision, or dental insurance benefits, including insurance premiums;

(FF) payment of any retirement benefit; or

(GG) payment of State or local tax assessed on the compensation of employees; and

(bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than $100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred ...

15 U.S.C. §636(a)(36)(A)(viii).

Plaintiff emphasizes Congress's use of the word "and" between subsections (aa) and (bb), arguing that "and" has a conjunctive meaning and that if Congress had intended two separate or alternative definitions of "payroll costs," it would have used "or," which implies a disjunctive meaning. In electing to link (aa) and (bb) with "and," Plaintiff argues that both categories of payments – to employees and independent contractors – may be considered in calculating payroll costs. Plaintiff also argues that the inclusion of the phrase "payments of any compensation to or income of a[n] independent contractor," 15 U.S.C § 636(a)(36)(A)(viii)(I)(bb), bolsters its interpretation that small business borrowers were permitted to include payments made to independent contractors

when calculating payroll costs. On the other hand, Defendants argue that (aa) addresses payments made to employees and (bb) *separately* addresses what PPP payments could be made to sole proprietors and independent contractors, and that use of the term "and" linking (aa) and (bb) does not indicate that a small business could aggregate payments made to both employees and independent contractors in calculating its payroll costs.

As this issue presents a question of statutory interpretation, the Court must first begin with the text of the statute itself. *United States v. Lauderdale Cnty., Miss.*, 914 F.3d 960, 961 (5th Cir. 2019). If the text is unambiguous, the analysis ends there. *Bedrock Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004); *United States v. Ary*, 892 F.3d 787, 789 (5th Cir. 2018). The "cardinal canon" of statutory interpretation requires courts to "presume … a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 239, 253-254 (1992). If "the agency's answer is based on a permissible construction of the statute," that is the end of the matter. *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 307, 133 S. Ct. 1863, 1874–75, 185 L. Ed. 2d 941 (2013) (*citing Chevron*, 467 U.S. at 842, 104 S. Ct. 2778).

First, from a textual standpoint, Section 636(a)(36)(A)(viii)(I) does not specify in subclause (I) that "payroll costs" is "the sum of" items (aa) (payments to employees) and (bb) (payments to independent contractors). However, in other provisions of the PPP, where Congress intended for a figure to be calculated by adding up a list of itemized costs, it did so by specifying at the next higher stratum

of the statute that the amount in question was to be calculated as "the sum of" the items listed at the level below. For example, Congress directed in Section 636(a)(36)(E)(i)(I) that a borrower's maximum PPP loan amount be calculated as "the sum of" items (aa) (payroll costs times 2.5) and (bb) (any EIDL loan balance) listed thereunder. Similarly, the maximum loan amount for a farmer or rancher without employees is calculated, per Section 636(a)(36)(V)(ii)(I), as "the sum of" items (aa) (2019 monthly gross income times 2.5) and (bb) (any EIDL loan balance) listed thereunder. *See also* 15 U.S.C. § 636m(b) (specifying in subsection (b) that the forgiveness amount shall be "the sum of" the expenses listed thereunder in paragraphs (1)-(8)). Here, Section 636(a)(36)(A)(viii)(I) states that "payroll costs" means employee compensation as set forth in item (aa), and, separately, compensation to or income of sole proprietors and independent contractors as set forth in item (bb). In other words, (aa) and (bb) were not meant to be added together to create a "sum." The text of the statute is clear that for small business employers, "payroll costs" means employee-compensation costs, while, for the self-employed – including independent contractors who were not classified as employees and could obtain PPP loans of their own – "payroll costs" means the income or compensation they earned for themselves.[6]

This interpretation of Section 636(a)(36)(A)(viii)(I) is consistent with the CARES Act as a whole. This Court has a "duty to construe statutes, not isolated provisions." *Graham Cnty. Soil & Water Conservation*

[6] "Payroll costs" means both things, not the sum of both things.

Dist. v. U.S. ex rel. Wilson, 559 U.S. 280, 290 (2010). Accordingly, provisions "must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989); *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 275 (2023). *See also JetPay Corp. v. United States Internal Revenue Serv.*, 26 F.4th 239, 242 (5th Cir. 2022) (internal marks omitted) (courts "interpret a statutory provision as part of a symmetrical and coherent regulatory scheme."). As the Defendants point out, Congress permitted contractors to apply for their own PPP loans. Thus, the Plaintiff's interpretation requires that this Court find, in essence, that Congress meant to allow PPP "double dipping," *i.e.*, permitting small businesses and their contractors to count the same amounts twice to obtain multiple loans. To accept the Plaintiff's interpretation, therefore, would require this Court to "attribute to Congress an intention to render a statute ... internally inconsistent." *Jones v. Hendrix*, 599 U.S. 465, 479 (2023); *see also Asadi v. G.E. Energy (USA), L.L.C.*, 720 F.3d 620, 622 (5th Cir. 2013) ("[W]e interpret provisions of a statute in a manner that renders them compatible, not contradictory."); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("A court must ... interpret the statute as a symmetrical and coherent regulatory scheme, and fit, if possible, all parts into a[ ] harmonious whole.") (citations and internal marks omitted).

Second, Defendants' interpretation of the CARES Act is also consistent with the documentation and certification requirements for loan forgiveness. For example, for PPP loans over $150,000, borrowers must document the number (and pay rates) of their

employees and certify that the amount for which forgiveness is sought was used to retain them (and to pay for other covered expenses). 15 U.S.C. § 636m. There is no similar requirement for independent contractors, indicating Congress's intent that small businesses' payments to independent contractors are not included in "payroll costs."

Finally, the Court notes that in enacting the CARES Act, Congress located the PPP in Section 7(a) — within the SBA's pre-existing loan authority — thereby rendering the PPP program subject to the SBA's creation of rules protecting the program's integrity. *See* 15 U.S.C. § 634(b)(6) (the SBA is authorized to "make such rules and regulations as" the agency "deems necessary" to implement the PPP); 15 U.S.C. § 634(b)(7) (the SBA may create rules and "take any and all actions" when it "determines such actions are necessary or desirable" in "dealing with" loans); 15 U.S.C. § 634(b)(11) (the SBA must "make such investigations as [the agency] deems necessary to determine whether a recipient" of "any assistance under this chapter ... has engaged ... in any acts" constituting a "violation of ... this chapter" or of "any order issued under this chapter."). The SBA's action in promulgating the First IFR, which interprets the CARES Act and provides guidance to borrowers, was entirely within the scope of power Congress vested in the SBA. Importantly, when Congress amended the CARES Act by passing the Coronavirus Response and Consolidated Appropriations Act (2021) ("CAA"), Pub. L. 116-260, Div. N, Title II, § 273(a), 134 Stat. 1182, 1976-78 (2020), it made two amendments to the CARES Act's initial definition of "payroll costs," but made no amendment overturning the SBA's

reasonable interpretation that a business's "payroll costs" do not include its payments to independent contractors. This action affirms the SBA's understanding of Congress's intent in enacting the PPP. *See, e.g.*, *Duarte v. Mayorkas*, 27 F. 4th 1044, 1059 (5th Cir. 2022) ("Congress can be presumed to be aware of relevant administrative interpretations when reenacting or amending a statute[.]").

Thus, for the foregoing reasons, the Court finds that the SBA's interpretation of 636(a)(36)(A)(viii)(I) was based on a permissible construction of the statute, and the SBA reasonably considered the relevant issues and explained its decision when it denied Plaintiff full forgiveness of its PPP loan. Therefore, the Court concludes that the SBA's decision was not arbitrary and capricious.

II. **Application of the ICR to Plaintiff's PPP Loan was not Improper**

Plaintiff next urges that the SBA improperly and retroactively applied the ICR to Plaintiff's PPP loan. In so arguing, the Plaintiff contends that the ICR, contained in the First IFR, was not effective until April 15, 2020, and therefore not applicable to the Plaintiff's April 7, 2020, loan application. Defendants respond that their position does not rely on the First IFR. Rather, as discussed herein, Defendants argue that the CARES Act itself does not permit inclusion of a business's independent contractor costs as "payroll costs" for purposes of the PPP.

As the Court has explained, the CARES Act gives the SBA power to enact rules governing how the PPP was to be administered. CARES Act, § 1114, 134 Stat. at 312 (codified at 15 U.S.C. § 9012). *In re Gateway*

Radiology Consultants, P.A., 983 F.3d 1239, 1249 (11th Cir. 2020). Acting on its statutory mandate, the SBA issued several IFRs, including the First IFR, relevant here. This IFR clarifies that "payroll costs" does not include payments to independent contractors for purposes of the PPP.

Review of the record and the regulatory scheme establishes that the First IFR is properly considered an interpretive regulation meant to clarify the scope and breadth of the PPP. Interpretative rules "advise the public of the agency's construction of the statutes and rules which it administers." *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 97, 135 S. Ct. 1199, 191 L. Ed. 2d 186 (2015), *quoting Shalala v. Guernsey Memorial Hosp.*, 514 U.S. 87, 99, 115 S. Ct. 1232, 131 L. Ed. 2d 106 (1995). The Fifth Circuit has recognized that an interpretative rule is one that "clarifies, rather than creates, law." *Professionals and Patients for Customized Care v. Shalala*, 56 F.3d 592, 602 (5th Cir. 1995). Thus, "[i]f an interpretative regulation merely clarifies what the language of [a] statute was intended to convey, it is ultimately misleading to term it retroactive." *Anderson, Clayton & Co. v. United States*, 562 F.2d 972, 985 n.30 (5th Cir. 1977). Such a regulation "constitutes only a step in the administrative process" and "is no more retroactive in its operation than is a judicial determination construing and applying a statute to a case in hand." *Manhattan Gen. Equip. Co. v. Comm'r of Internal Revenue*, 297 U.S. 129, 135 (1936).

Here, the First IFR, which clarified that payments to independent contractors may not be included in payroll costs to determine the amount of a PPP loan, is consistent with the text of the CARES Act itself.

Furthermore, as the ALJ explained, pursuant to 15 U.S.C. § 9012, Congress gave the SBA just 15 days to issue rules with respect to the PPP but expressly waived the notice requirements of Section 553(b) of Title 5. Thus, the First IFR was effective without publication in the Federal Register and was issued for the immediate implementation of the PPP through publication on the SBA's and Treasury's websites on April 2, 2020. As publication of the rule in the Federal Register was not required, the ALJ properly determined that the SBA *did* notify borrowers that wages paid to independent contractors could not be used as payroll costs prior to the Plaintiff's loan application submitted on April 7, 2022. For these reasons, the Court concludes that the Plaintiff's argument the ICR was improperly retroactively applied to its PPP loan is without merit.

III. **Equitable Estoppel and Injunctive Relief Claims**

Finally, the Plaintiff argues that equitable estoppel and principles of fundamental fairness and due process require vacatur of the SBA Decision. "Courts have been exceedingly reluctant to grant equitable estoppel against the government." *Gutierrez v. Lynch*, 830 F.3d 179, 182 (5th Cir. 2016), *citing Robertson-Dewar v. Holder*, 646 F.3d 226, 229–30 (5th Cir. 2011). *See also Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 110 S. Ct. 2465, 2469–72, 110 L. Ed. 2d 387 (1990) (noting that the Supreme Court has "reversed every finding of estoppel that [it has] reviewed"). Furthermore, the "judicial use of the equitable doctrine of estoppel cannot grant respondent a money remedy that Congress has not authorized." *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 387 (5th Cir. 2005),

Richmond, 496 U.S. at 426. A claim for equitable estoppel against the government bears heightened requirements, and "[a]ffirmative misconduct requires an affirmative misrepresentation or affirmative concealment of a material fact by the government." *Linkous v. United States*, 142 F.3d 271, 278 (5th Cir.1998) (internal quotations marks omitted).

Here, the SBA did not misrepresent or affirmatively conceal the procedures and calculations to be used to determine the maximum loan amount under the PPP. While it is certainly possible that the Plaintiff may have misunderstood the terms and conditions of obtaining a PPP loan, or perhaps obtained incorrect information from the Lender during the loan application process, this is insufficient to satisfy the heightened standards for equitable relief against the SBA under the facts and circumstances of this case.

CONCLUSION

Thus, for the reasons stated herein, this Court finding no genuine issues of material fact and having concluded that the SBA's decision was not arbitrary and capricious, the SBA did not improperly retroactively apply the ICR to the Plaintiff's PPP loan, and the SBA did not misrepresent or affirmatively conceal the procedures to be used to obtain a PPP loan, the Court concludes that Defendants are entitled to judgment as a matter of law.

Considering the foregoing,

IT IS HEREBY ORDERED that Plaintiff's MOTION FOR SUMMARY JUDGMENT [Doc. 23] is DENIED.

IT IS FURTHER ORDERED that Defendants' CROSS MOTION FOR SUMMARY JUDGMENT [Doc. 29] is GRANTED, and Plaintiff's claims against all

Defendants are DENIED and DISMISSED WITH PREJUDICE.

THUS, DONE AND SIGNED in Chambers on this 20th day of February 2024.

DAVID C. JOSEPH
UNITED STATES DISTRICT JUDGE

APPENDIX D

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15 U.S.C. § 636: Additional powers

(a) Loans to small business concerns; allowable purposes; qualified business; restrictions and limitations

The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this chapter. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

* * *

(36) Paycheck Protection Program

(A) Definitions

In this paragraph–

(i) the terms "appropriate Federal banking agency" and "insured depository institution" have the meanings given those terms in section 1813 of Title 12;

(ii) the term "covered loan" means a loan made under this paragraph during the covered period;

(iii) the term "covered period" means the period beginning on February 15, 2020 and ending on June 30, 2021;

(iv) the term "eligible recipient" means an individual or entity that is eligible to receive a covered loan;

(v) the term "eligible self-employed individual" has the meaning given the term in section 7002(b) of the Families First Coronavirus Response Act (Public Law 116-127);

(vi) the term "insured credit union" has the meaning given the term in section 1752 of Title 12;

(vii) the term "nonprofit organization" means an organization that is described in section 501(c)(3) of Title 26 and that is exempt from taxation under section 501(a) of Title 26;

(viii) the term "payroll costs"–

(I) means–

(aa) the sum of payments of any compensation with respect to employees that is a—

(AA) salary, wage, commission, or similar compensation;

(BB) payment of cash tip or equivalent;

(CC) payment for vacation, parental, family, medical, or sick leave;

(DD) allowance for dismissal or separation;

(EE) payment required for the provisions of group health care or group life, disability, vision, or dental insurance benefits, including insurance premiums;

(FF) payment of any retirement benefit; or

(GG) payment of State or local tax assessed on the compensation of employees; and

(bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than $100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred; and

(II) shall not include–

(aa) the compensation of an individual employee in excess of $100,000 on an annualized basis, as prorated for the period during which

the compensation is paid or the obligation to pay the compensation is incurred;

(bb) taxes imposed or withheld under chapters 21, 22, or 24 of Title 26 during the applicable period;

(cc) any compensation of an employee whose principal place of residence is outside of the United States;

(dd) qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116-127); or

(ee) qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116-127);

(ix) the term "veterans organization" means an organization that is described in section 501(c)(19) of Title 26 that is exempt from taxation under section 501(a) of Title 26;

(x) the term "community development financial institution" has the meaning given the term in section 4702 of Title 12);

(xi) the term "community financial institutions" means–

(I) a community development financial institution;

(II) a minority depository institution, as defined in section 308 of the Financial

Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note);

(III) a development company that is certified under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.); and

(IV) an intermediary, as defined in subsection (m)(11);

(xii) the term "credit union" means a State credit union or a Federal credit union, as those terms are defined, respectively, in section 1752 of Title 12;

(xiii) the term "seasonal employer" means an eligible recipient that–

(I) does not operate for more than 7 months in any calendar year; or

(II) during the preceding calendar year, had gross receipts for any 6 months of that year that were not more than 33.33 percent of the gross receipts of the employer for the other 6 months of that year;

(xiv) the term "housing cooperative" means a cooperative housing corporation (as defined in section 216(b) of Title 26) that employs not more than 300 employees;

(xv) the term "destination marketing organization" means a nonprofit entity that is–

(I) an organization described in section 501(c) of Title 26 and exempt from tax under section 501(a) of such Title; or

(II) a State, or a political subdivision of a State (including any instrumentality of such entities)–

(aa) engaged in marketing and promoting communities and facilities to businesses and leisure travelers through a range of activities, including–

(AA) assisting with the location of meeting and convention sites;

(BB) providing travel information on area attractions, lodging accommodations, and restaurants;

(CC) providing maps; and

(DD) organizing group tours of local historical, recreational, and cultural attractions; or

(bb) that is engaged in, and derives the majority of the operating budget of the entity from revenue attributable to, providing live events;

(xvi) the terms "exchange", "issuer", and "security" have the meanings given those terms in section 78c(a) of this title; and

(xvii) the term "additional covered nonprofit entity"–

(I) means an organization described in any paragraph of section 501(c) of Title 26, other than paragraph (3), (4), (6), or

(19), and exempt from tax under section 501(a) of such title; and

(II) does not include any entity that, if the entity were a business concern, would be described in section 120.110 of title 13, Code of Federal Regulations (or in any successor regulation or other related guidance or rule that may be issued by the Administrator) other than a business concern described in paragraph (a) or (k) of such section.

(B) Paycheck Protection loans

Except as otherwise provided in this paragraph, the Administrator may guarantee covered loans under the same terms, conditions, and processes as a loan made under this subsection.

(C) Registration of loans

Not later than 15 days after the date on which a loan is made under this paragraph, the Administration shall register the loan using the TIN (as defined in section 7701 of Title 26) assigned to the borrower.

(D) Increased eligibility for certain small businesses and organizations

(i) In general

During the covered period, in addition to small business concerns, any business concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern described in section 657a(b)(2)(C) of this title shall be eligible to receive a covered loan if the business

concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern employs not more than the greater of–

(I) 500 employees; or

(II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern operates.

(ii) Inclusion of sole proprietors, independent contractors, and eligible self-employed individuals

(I) In general

During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.

(II) Documentation

An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as determined necessary by the Administrator and the Secretary, to establish the applicant as eligible.

(iii) Business concerns with more than 1 physical location

(I) In general

During the covered period, any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursal shall be eligible to receive a covered loan.

(II) Eligibility of news organizations

(aa) Definition

In this subclause, the term "included business concern" means a business concern, including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto–

(AA) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern; or

(BB) any nonprofit organization or any organization otherwise subject to section 511(a)(2)(B) of Title 26 that is a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11))).

(bb) Eligibility

During the covered period, an included business concern shall be eligible to receive a covered loan if–

(AA) the included business concern is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151 or, with respect to a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11))), has a trade or business that falls under such a code; and

(BB) the included business concern makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the included business concern that produces or distributes locally focused or emergency information.

(III) Eligibility of certain organizations

Subject to the provisions in this subparagraph, during the covered period–

(aa) a nonprofit organization shall be eligible to receive a covered loan if the nonprofit organization employs not more than 500 employees per physical location of the organization; and

(bb) an additional covered nonprofit entity and an organization that, but for subclauses (I)(dd) and (II)(dd) of clause (vii), would be eligible for a covered loan under clause (vii) shall be eligible to receive a covered loan if the entity or organization employs not more than 300 employees per physical location of the entity or organization.

(IV) Eligibility of internet publishing organizations

A business concern or other organization that was not eligible to receive a covered loan the day before March 11, 2021, is assigned a North American Industry Classification System code of 519130, certifies in good faith as an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information shall be eligible to receive a covered loan for the continued provision

of news, information, content, or emergency information if–

(aa) the business concern or organization employs not more than 500 employees, or the size standard established by the Administrator for that North American Industry Classification code, per physical location of the business concern or organization; and

(bb) the business concern or organization makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news.

(iv) Waiver of affiliation rules

During the covered period, the provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor regulation, are waived with respect to eligibility for a covered loan for–

(I) any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code beginning with 72;

(II) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration;

(III) any business concern that receives financial assistance from a company licensed under section 681 of this title;

(IV)(aa) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or

(bb) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151; and

(V) any business concern or other organization that was not eligible to receive a covered loan the day before March 11, 2021, is assigned a North American Industry Classification System code of 519130, certifies in good faith as

an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, if the business concern or organization–

(aa) employs not more than 500 employees, or the size standard established by the Administrator for that North American Industry Classification code, per physical location of the business concern or organization; and

(bb) is majority owned or controlled by a business concern or organization that is assigned a North American Industry Classification System code of 519130.

(v) Employee

For purposes of determining whether a business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 657a(b)(2)(C) of this title employs not more than 500 employees under clause (i)(I), or for purposes of determining the number of employees of a housing cooperative or a business concern or organization made eligible for a loan under this paragraph under subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix), the term "employee" includes individuals

employed on a full-time, part-time, or other basis.

(vi) Affiliation

The provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor thereto, shall apply with respect to a nonprofit organization a business concern or organization made eligible for a loan under this paragraph under clause (vii), and, a housing cooperative, a veterans organization in the same manner as with respect to a small business concern.

(vii) Eligibility for certain 501(c)(6) organizations

(I) In general

Any organization that is described in section 501(c)(6) of Title 26 and that is exempt from taxation under section 501(a) of such Title (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 covered loan if–

(aa) the organization does not receive more than 15 percent of its receipts from lobbying activities;

(bb) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization;

(cc) the cost of the lobbying activities of the organization did not exceed $1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and[7]

(dd) the organization employs not more than 300 employees.

(II) Destination marketing organizations

Any destination marketing organization shall be eligible to receive a covered loan if–

(aa) the destination marketing organization does not receive more than 15 percent of its receipts from lobbying activities;

(bb) the lobbying activities of the destination marketing organization do not comprise more than 15 percent of the total activities of the organization;

(cc) the cost of the lobbying activities of the destination marketing organization did not exceed $1,000,000 during the most recent tax year of the destination marketing organization that ended prior to February 15, 2020; and[8]

(dd) the destination marketing organization employs not more than 300 employees; and

(ee) the destination marketing organization–

(AA) is described in section 501(c) of Title 26 and is exempt from taxation under section 501(a) of such Title; or

(BB) is a quasi-governmental entity or is a political subdivision of a State or local government, including any instrumentality of those entities.

(viii) Ineligibility of publicly-traded entities

(I) In general

Subject to subclause (II), and notwithstanding any other provision of this paragraph, on and after December 27, 2020, an entity that is an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 78f of this title, shall be ineligible to receive a covered loan under this paragraph.

(II) Rule for affiliated entities

With respect to a business concern or organization made eligible by subclause (II) or (IV) of clause (iii) or subclause (IV) or (V) of clause (iv) of this subparagraph, the Administrator shall not consider whether any affiliated entity, which for purposes of this subclause shall include any entity that owns or controls such

business concern or organization, is an issuer.

(ix) Eligibility of additional covered nonprofit entities

An additional covered nonprofit entity shall be eligible to receive a covered loan if–

(I) the additional covered nonprofit entity does not receive more than 15 percent of its receipts from lobbying activities;

(II) the lobbying activities of the additional covered nonprofit entity do not comprise more than 15 percent of the total activities of the organization;

(III) the cost of the lobbying activities of the additional covered nonprofit entity did not exceed $1,000,000 during the most recent tax year of the additional covered nonprofit entity that ended prior to February 15, 2020; and

(IV) the additional covered nonprofit entity employs not more than 300 employees.

(E) Maximum loan amount

Except as provided in subparagraph (V), during the covered period, with respect to a covered loan, the maximum loan amount shall be the lesser of–

(i)(I) the sum of–

(aa) the product obtained by multiplying–

(AA) the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made, except that an applicant that is a seasonal employer shall use the average total monthly payments for payroll for any 12-week period selected by the seasonal employer between February 15, 2019, and February 15, 2020; by

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan; or

(II) if requested by an otherwise eligible recipient that was not in business during the period beginning on February 15, 2019 and ending on June 30, 2019, the sum of–

(aa) the product obtained by multiplying–

(AA) the average total monthly payments by the applicant for payroll costs incurred during the period beginning on January 1, 2020 and ending on February 29, 2020; by

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan; or

(ii) $10,000,000.

(F) Allowable uses of covered loans

(i) In general

During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for–

(I) payroll costs;

(II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

(III) employee salaries, commissions, or similar compensations;

(IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);

(V) rent (including rent under a lease agreement);

(VI) utilities;

(VII) interest on any other debt obligations that were incurred before the covered period;

(VIII) covered operations expenditures, as defined in section 636m(a) of this title;

(IX) covered property damage costs, as defined in section 636m(a) of this title;

(X) covered supplier costs, as defined in section 636m(a) of this title; and

(XI) covered worker protection expenditures, as defined in section 636m(a) of this title.

(ii) Delegated authority

(I) In general

For purposes of making covered loans for the purposes described in clause (i), a lender approved to make loans under this subsection shall be deemed to have been delegated authority by the Administrator to make and approve covered loans, subject to the provisions of this paragraph.

(II) Considerations

In evaluating the eligibility of a borrower for a covered loan with the terms described in this paragraph, a lender shall consider whether the borrower–

(aa) was in operation on February 15, 2020; and

(bb)(AA) had employees for whom the borrower paid salaries and payroll taxes; or

(BB) paid independent contractors, as reported on a Form 1099-MISC.

(iii) Additional lenders

The authority to make loans under this paragraph shall be extended to additional lenders determined by the Administrator and the Secretary of the Treasury to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.

(iv) Refinance

A loan made under subsection (b)(2) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available may be refinanced as part of a covered loan.

(v) Nonrecourse

Notwithstanding the waiver of the personal guarantee requirement or collateral under subparagraph (J), the Administrator shall have no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to the extent that such shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized under clause (i) or (iv).

(vi) Prohibition

None of the proceeds of a covered loan may be used for–

(I) lobbying activities, as defined in section 1602 of Title 2;

(II) lobbying expenditures related to a State or local election; or

(III) expenditures designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.

(G) Borrower requirements

(i) Certification

An eligible recipient applying for a covered loan shall make a good faith certification–

(I) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

(II) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

(III) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

(IV) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

(H) Fee waiver

With respect to a covered loan–

(i) in lieu of the fee otherwise applicable under paragraph (23)(A), the Administrator shall collect no fee; and

(ii) in lieu of the fee otherwise applicable under paragraph (18)(A), the Administrator shall collect no fee.

(I) Credit elsewhere

During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere, as defined in section 632(h) of this title, shall not apply to a covered loan.

(J) Waiver of personal guarantee requirement

With respect to a covered loan–

(i) no personal guarantee shall be required for the covered loan; and

(ii) no collateral shall be required for the covered loan.

(K) Maturity for loans with remaining balance after application of forgiveness

With respect to a covered loan that has a remaining balance after reduction based on the loan forgiveness amount under section 636m of this title–

(i) the remaining balance shall continue to be guaranteed by the Administration under this subsection; and

(ii) the covered loan shall have a minimum maturity of 5 years and a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness under that section.

(L) Interest rate requirements

A covered loan shall bear an interest rate not to exceed 4 percent, calculated on a non-compounding, non-adjustable basis.

(M) Loan deferment

(i) Definition of impacted borrower

(I) In general

In this subparagraph, the term "impacted borrower" means an eligible recipient that–

(aa) is in operation on February 15, 2020; and

(bb) has an application for a covered loan that is approved or pending approval on or after March 27, 2020.

(II) Presumption

For purposes of this subparagraph, an impacted borrower is presumed to have been adversely impacted by COVID-19.

(ii) Deferral

The Administrator shall–

(I) consider each eligible recipient that applies for a covered loan to be an impacted borrower; and

(II) require lenders under this subsection to provide complete payment deferment relief for impacted borrowers with covered loans, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 636m of this title is remitted to the lender.

(iii) Secondary market

With respect to a covered loan that is sold on the secondary market, if an investor declines to approve a deferral requested by a lender under clause (ii), the Administrator shall exercise the authority to purchase the loan so that the impacted borrower may receive a deferral, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 636m of this title is remitted to the lender.

(iv) Guidance

Not later than 30 days after March 27, 2020, the Administrator shall provide guidance to lenders under this paragraph on the deferment process described in this subparagraph.

(v) Rule of construction

If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period defined in section 636m(a) of this title, such eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

(N) Secondary market sales

A covered loan shall be eligible to be sold in the secondary market consistent with this subsection. The Administrator may not collect any fee for any guarantee sold into the secondary market under this subparagraph.

(O) Regulatory capital requirements

(i) Risk weight

With respect to the appropriate Federal banking agencies or the National Credit Union Administration Board applying capital requirements under their respective risk-based capital requirements, a covered loan shall receive a risk weight of zero percent.

(ii) Temporary relief from TDR disclosures

Notwithstanding any other provision of law, an insured depository institution or an insured credit union that modifies a covered loan in relation to COVID-19-related difficulties in a troubled debt restructuring on or after March 13, 2020, shall not be

required to comply with the Financial Accounting Standards Board Accounting Standards Codification Subtopic 310-40 ("Receivables - Troubled Debt Restructurings by Creditors") for purposes of compliance with the requirements of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), until such time and under such circumstances as the appropriate Federal banking agency or the National Credit Union Administration Board, as applicable, determines appropriate.

(P) Reimbursement for processing

(i) In general

The Administrator shall reimburse a lender authorized to make a covered loan as follows:

(I) With respect to a covered loan made during the period beginning on March 27, 2020, and ending on the day before December 27, 2020, the Administrator shall reimburse such a lender at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of–

(aa) 5 percent for loans of not more than $350,000;

(bb) 3 percent for loans of more than $350,000 and less than $2,000,000; and

(cc) 1 percent for loans of not less than $2,000,000.

(II) With respect to a covered loan made on or after December 27, 2020, the Administrator shall reimburse such a lender–

(aa) for a covered loan of not more than $50,000, in an amount equal to the lesser of–

(AA) 50 percent of the balance of the financing outstanding at the time of disbursement of the covered loan; or

(BB) $2,500; and

(bb) at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of–

(AA) 5 percent for a covered loan of more than $50,000 and not more than $350,000;

(BB) 3 percent for a covered loan of more than $350,000 and less than $2,000,000; and

(CC) 1 percent for a covered loan of not less than $2,000,000.

(ii) Fee limits

An agent that assists an eligible recipient to prepare an application for a covered loan may not collect a fee in excess of the limits established by the Administrator. If an eligible recipient has knowingly retained an agent, such fees shall be paid by the eligible recipient and may not be paid out of the

proceeds of a covered loan. A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent.

(iii) Timing

A reimbursement described in clause (i) shall be made not later than 5 days after the reported disbursement of the covered loan and may not be required to be repaid by a lender unless the lender is found guilty of an act of fraud in connection with the covered loan.

(iv) Sense of the Senate

It is the sense of the Senate that the Administrator should issue guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 637(d)(3)(C) of this title), women, and businesses in operation for less than 2 years.

(Q) Duplication

Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under subsection (b)(2) that is for a purpose other than paying payroll costs and other obligations described in subparagraph (F) from receiving assistance under this paragraph.

(R) Waiver of prepayment penalty

Notwithstanding any other provision of law, there shall be no prepayment penalty for any payment made on a covered loan.

(S) Set-aside for insured depository institutions, credit unions, and community financial institutions

(i) Insured depository institutions and credit unions

In making loan guarantees under this paragraph after April 24, 2020, the Administrator shall guarantee not less than $30,000,000,000 in loans made by–

(I) insured depository institutions with consolidated assets of not less than $10,000,000,000 and less than $50,000,000,000; and

(II) credit unions with consolidated assets of not less than $10,000,000,000 and less than $50,000,000,000.

(ii) Community financial institutions, small insured depository institutions, and credit unions

In making loan guarantees under this paragraph after April 24, 2020, the Administrator shall guarantee not less than $30,000,000,000 in loans made by–

(I) community financial institutions;

(II) insured depository institutions with consolidated assets of less than $10,000,000,000; and

(III) credit unions with consolidated assets of less than $10,000,000,000.

(T) Requirement for date in operation

A business or organization that was not in operation on February 15, 2020 shall not be eligible for a loan under this paragraph.

(U) Exclusion of entities receiving shuttered venue operator grants

An eligible person or entity (as defined under of section 9009a of this title) that receives a grant under such section 9009a shall not be eligible for a loan under this paragraph.

(V) Calculation of maximum loan amount for farmers and ranchers

(i) Definition

In this subparagraph, the term "covered recipient" means an eligible recipient that–

(I) operates as a sole proprietorship or as an independent contractor, or is an eligible self-employed individual;

(II) reports farm income or expenses on a Schedule F (or any equivalent successor schedule); and

(III) was in business as of February 15, 2020.

(ii) No employees

With respect to covered recipient without employees, the maximum covered loan amount shall be the lesser of–

(I) the sum of–

(aa) the product obtained by multiplying–

(AA) the gross income of the covered recipient in 2019, as reported on a Schedule F (or any equivalent successor schedule), that is not more than $100,000, divided by 12; and

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on April 3, 2020 that the borrower intends to refinance under the covered loan, not including any amount of any advance under the loan that is not required to be repaid; or

(II) $2,000,000.

(iii) With employees

With respect to a covered recipient with employees, the maximum covered loan amount shall be calculated using the formula described in subparagraph (E), except that the gross income of the covered recipient described in clause (ii)(I)(aa)(AA) of this subparagraph, as divided by 12, shall be added to the sum calculated under subparagraph (E)(i)(I).

(iv) Recalculation

A lender that made a covered loan to a covered recipient before December 27, 2020 may, at the request of the covered recipient–

(I) recalculate the maximum loan amount applicable to that covered loan based on the formula described in clause (ii) or (iii), as applicable, if doing so would result in a larger covered loan amount; and

(II) provide the covered recipient with additional covered loan amounts based on that recalculation.

(W) Fraud enforcement harmonization

Notwithstanding any other provision of law, any criminal charge or civil enforcement action alleging that a borrower engaged in fraud with respect to a covered loan guaranteed under this paragraph shall be filed not later than 10 years after the offense was committed.

* * *

15 U.S.C. § 636m. Loan forgiveness

(a) Definitions

In this section-

(1) the term "covered loan" means a loan guaranteed under section 636(a)(36) of this title;

(2) the term "covered mortgage obligation" means any indebtedness or debt instrument incurred in the ordinary course of business that-

(A) is a liability of the borrower;

(B) is a mortgage on real or personal property; and

(C) was incurred before February 15, 2020;

(3) the term "covered operations expenditure" means a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses;

(4) the term "covered period" means the period-

(A) beginning on the date of the origination of a covered loan; and

(B) ending on a date selected by the eligible recipient of the covered loan that occurs during the period-

(i) beginning on the date that is 8 weeks after such date of origination; and

(ii) ending on the date that is 24 weeks after such date of origination;

(5) the term "covered property damage cost" means a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation;

(6) the term "covered rent obligation" means rent obligated under a leasing agreement in force before February 15, 2020;

(7) the term "covered supplier cost" means an expenditure made by an entity to a supplier of goods for the supply of goods that-

(A) are essential to the operations of the entity at the time at which the expenditure is made; and

(B) is made pursuant to a contract, order, or purchase order-

(i) in effect at any time before the covered period with respect to the applicable covered loan; or

(ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan;

(8) the term "covered utility payment" means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020;

(9) the term "covered worker protection expenditure"-

(A) means an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of

Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID–19) expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19;

(B) may include-

(i) the purchase, maintenance, or renovation of assets that create or expand-

(I) a drive-through window facility;

(II) an indoor, outdoor, or combined air or air pressure ventilation or filtration system;

(III) a physical barrier such as a sneeze guard;

(IV) an expansion of additional indoor, outdoor, or combined business space;

(V) an onsite or offsite health screening capability; or

(VI) other assets relating to the compliance with the requirements or guidance described in subparagraph (A), as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

(ii) the purchase of-

(I) covered materials described in section 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation;

(II) particulate filtering facepiece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; or

(III) other kinds of personal protective equipment, as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and

(C) does not include residential real property or intangible property;

(10) the term "eligible recipient" means the recipient of a covered loan;

(11) the term "expected forgiveness amount" means the amount of principal that a lender reasonably expects a borrower to expend during the covered period on the sum of any-

(A) payroll costs;

(B) payments of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);

(C) payments on any covered rent obligation;

(D) covered utility payments;

(E) covered operations expenditures;

(F) covered property damage costs;

(G) covered supplier costs; and

(H) covered worker protection expenditures; and

(12) the terms "payroll costs" and "seasonal employer" have the meanings given those terms in section 636(a)(36) of this title. Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under section 2301 of the CARES Act, qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020, or premiums taken into account in determining the credit allowed under section 6432 of title 26. Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020.

(b) Forgiveness

An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:

(1) Payroll costs.

(2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).

(3) Any payment on any covered rent obligation.

(4) Any covered utility payment.

(5) Any covered operations expenditure.

(6) Any covered property damage cost.

(7) Any covered supplier cost.

(8) Any covered worker protection expenditure.

(c) Treatment of amounts forgiven

(1) In general

Amounts which have been forgiven under this section shall be considered canceled indebtedness by a lender authorized under section 636(a) of this title.

(2) Purchase of guarantees

For purposes of the purchase of the guarantee for a covered loan by the Administrator, amounts which are forgiven under this section shall be treated in accordance with the procedures that are otherwise applicable to a loan guaranteed under section 636(a) of this title.

(3) Remittance

Not later than 90 days after the date on which the amount of forgiveness under this section is determined, the Administrator shall remit to the lender an amount equal to the amount of forgiveness, plus any interest accrued through the date of payment.

(4) Advance purchase of covered loan

(A) Report

A lender authorized under section 636(a) of this title, or, at the discretion of the Administrator, a third party participant in the secondary market, may, report to the Administrator an expected forgiveness amount on a covered loan or on a pool of covered loans of up to 100 percent of the principal on the covered loan or pool of covered loans, respectively.

(B) Purchase

The Administrator shall purchase the expected forgiveness amount described in subparagraph (A) as

if the amount were the principal amount of a loan guaranteed under section 636(a) of this title.

(C) Timing

Not later than 15 days after the date on which the Administrator receives a report under subparagraph (A), the Administrator shall purchase the expected forgiveness amount under subparagraph (B) with respect to each covered loan to which the report relates.

(d) Limits on amount of forgiveness

(1) Amount may not exceed principal

The amount of loan forgiveness under this section shall not exceed the principal amount of the financing made available under the applicable covered loan.

(2) Reduction based on reduction in number of employees

(A) In general

The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (b) by the quotient obtained by dividing-

(i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by

(ii)(I) at the election of the borrower-

(aa) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or

(bb) the average number of full-time equivalent employees per month employed

by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or

(II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

(B) Calculation of average number of employees

For purposes of subparagraph (A), the average number of full-time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

(3) Reduction relating to salary and wages

(A) In general

The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.

(B) Employees described

An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000.

(4) Tipped workers

An eligible recipient with tipped employees described in section 203(m)(2)(A) of title 29 may receive forgiveness for additional wages paid to those employees.

(5) Exemption for re-hires

(A) In general

In a circumstance described in subparagraph (B), the amount of loan forgiveness under this section shall be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of 1 or more employees of the eligible recipient, as applicable, during the period beginning on February 15, 2020 and ending on the date that is 30 days after March 27, 2020.

(B) Circumstances

A circumstance described in this subparagraph is a circumstance-

(i) in which-

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after March 27, 2020, there is a reduction, as compared to February 15, 2020, in the number of full-time equivalent employees of an eligible recipient; and

(II) not later than December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, not later than the last day of the covered period with respect to such covered loan), the eligible employer has eliminated the reduction in the number of full-time equivalent employees;

(ii) in which-

(I) during the period beginning on February 15, 2020 and ending on the date that is 30

days after March 27, 2020, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and

(II) not later than December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, not later than the last day of the covered period with respect to such covered loan), the eligible employer has eliminated the reduction in the salary or wages of such employees; or

(iii) in which the events described in clause (i) and (ii) occur.

(6) Exemptions

The Administrator and the Secretary of the Treasury may prescribe regulations granting de minimis exemptions from the requirements under this subsection.

(7) Exemption based on employee availability

During the period beginning on February 15, 2020, and ending on December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, ending on the last day of the covered period with respect to such covered loan), the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith-

(A) is able to document-

(i) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and

(ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, on or before the last day of the covered period with respect to such covered loan); or

(B) is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020 (or, with respect to a covered loan made on or after December 27, 2020, ending on the last day of the covered period with respect to such covered loan), related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19.

(8) Limitation on forgiveness

To receive loan forgiveness under this section, an eligible recipient shall use at least 60 percent of the covered loan amount for payroll costs, and may use up to 40 percent of such amount for any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation), any payment on any covered rent obligation, any payment on any covered operations expenditure, any payment on any covered property damage cost, any payment on any covered supplier cost, any payment on any covered

worker protection expenditure, or any covered utility payment.

(e) Application

Except as provided in subsection (l), an eligible recipient seeking loan forgiveness under this section shall submit to the lender that is servicing the covered loan an application, which shall include-

(1) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including-

(A) payroll tax filings reported to the Internal Revenue Service; and

(B) State income, payroll, and unemployment insurance filings;

(2) documentation, including cancelled checks, payment receipts, transcripts of accounts, purchase orders, orders, invoices, or other documents verifying payments on covered mortgage obligations, payments on covered rent obligations, payments on covered operations expenditures, payments on covered property damage costs, payments on covered supplier costs, payments on covered worker protection expenditures, and covered utility payments;

(3) a certification from a representative of the eligible recipient authorized to make such certifications that-

(A) the documentation presented is true and correct; and

(B) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, make

payments on covered operations expenditures, make payments on covered property damage costs, make payments on covered supplier costs, make payments on covered worker protection expenditures, or make covered utility payments; and

(4) any other documentation the Administrator determines necessary.

(f) Prohibition on forgiveness without documentation

No eligible recipient shall receive forgiveness under this section without submitting to the lender that is servicing the covered loan the documentation required under subsection (e) or the certification required under subsection (l), as applicable.

(g) Decision

Not later than 60 days after the date on which a lender receives an application for loan forgiveness under this section from an eligible recipient, the lender shall issue a decision on the an 1 application.

(h) Hold harmless

(1) Definition

In this subsection, the term "initial or second draw PPP loan" means a covered loan or a loan under paragraph (37) of section 636(a) of this title.

(2) Reliance

A lender may rely on any certification or documentation submitted by an applicant for an initial or second draw PPP loan or an eligible recipient or eligible entity receiving initial or second draw PPP loan that-

(A) is submitted pursuant to all applicable statutory requirements, regulations, and guidance related to initial or second draw PPP loan, including under paragraph (36) or (37) of section 636(a) of this title and under this section; and

(B) attests that the applicant, eligible recipient, or eligible entity, as applicable, has accurately provided the certification or documentation to the lender in accordance with the statutory requirements, regulations, and guidance described in subparagraph (A).

(3) No enforcement action

With respect to a lender that relies on a certification or documentation described in paragraph (2) related to an initial or second draw PPP loan, an enforcement action may not be taken against the lender, and the lender shall not be subject to any penalties relating to loan origination or forgiveness of the initial or second draw PPP loan, if-

(A) the lender acts in good faith relating to loan origination or forgiveness of the initial or second draw PPP loan based on that reliance; and

(B) all other relevant Federal, State, local, and other statutory and regulatory requirements applicable to the lender are satisfied with respect to the initial or second draw PPP loan.

(i) Tax treatment

For purposes of title 26-

(1) no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness described in subsection (b),

(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

(3) in the case of an eligible recipient that is a partnership or S corporation-

(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of title 26, and

(B) except as provided by the Secretary of the Treasury (or the Secretary's delegate), any increase in the adjusted basis of a partner's interest in a partnership under section 705 of title 26 with respect to any amount described in subparagraph (A) shall equal the partner's distributive share of deductions resulting from costs giving rise to forgiveness described in subsection (b).

(j) Rule of construction

The cancellation of indebtedness on a covered loan under this section shall not otherwise modify the terms and conditions of the covered loan.

(k) Regulations

Not later than 30 days after March 27, 2020, the Administrator shall issue guidance and regulations implementing this section.

(l) Simplified application

(1) Covered loans up to $150,000

(A) In general

With respect to a covered loan made to an eligible recipient that is not more than $150,000, the

covered loan amount shall be forgiven under this section if the eligible recipient-

(i) signs and submits to the lender a certification, to be established by the Administrator not later than 24 days after December 27, 2020, which-

(I) shall be not more than 1 page in length; and

(II) shall only require the eligible recipient to provide-

(aa) a description of the number of employees the eligible recipient was able to retain because of the covered loan;

(bb) the estimated amount of the covered loan amount spent by the eligible recipient on payroll costs; and

(cc) the total loan value;

(ii) attests that the eligible recipient has-

(I) accurately provided the required certification; and

(II) complied with the requirements under section 636(a)(36) of this title; and

(iii) retains records relevant to the form that prove compliance with such requirements-

(I) with respect to employment records, for the 4-year period following submission of the form; and

(II) with respect to other records, for the 3-year period following submission of the form.

(B) Limitation on requiring additional materials

An eligible recipient of a covered loan that is not more than $150,000 shall not, at the time of the application for forgiveness, be required to submit any application or documentation in addition to the certification and information required to substantiate forgiveness.

(C) Records for other requirements

Nothing in subparagraph (A) or (B) shall be construed to exempt an eligible recipient from having to provide documentation independently to a lender to satisfy relevant Federal, State, local, or other statutory or regulatory requirements, or in connection with an audit as authorized under subparagraph (E).

(D) Demographic information

The certification established by the Administrator under subparagraph (A) shall include a means by which an eligible recipient may, at the discretion of the eligible recipient, submit demographic information of the owner of the eligible recipient, including the sex, race, ethnicity, and veteran status of the owner.

(E) Audit authority

The Administrator may-

(i) review and audit covered loans described in subparagraph (A);

(ii) access any records described in subparagraph (A)(iii); and

(iii) in the case of fraud, ineligibility, or other material noncompliance with applicable loan or loan forgiveness requirements, modify-

(I) the amount of a covered loan described in subparagraph (A); or

(II) the loan forgiveness amount with respect to a covered loan described in subparagraph (A).

(2) Covered loans of more than $150,000

(A) In general

With respect to a covered loan in an amount that is more than $150,000, the eligible recipient shall submit to the lender that is servicing the covered loan the documentation described in subsection (e).

(B) Demographic information

The process for submitting the documentation described in subsection (e) shall include a means by which an eligible recipient may, at the discretion of the eligible recipient, submit demographic information of the owner of the eligible recipient, including the sex, race, ethnicity, and veteran status of the owner.

(3) Forgiveness audit plan

(A) In general

Not later than 45 days after December 27, 2020, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives an audit plan that details-

(i) the policies and procedures of the Administrator for conducting forgiveness reviews and audits of covered loans; and

(ii) the metrics that the Administrator shall use to determine which covered loans will be audited.

(B) Reports

Not later than 30 days after the date on which the Administrator submits the audit plan required under subparagraph (A), and each month thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the forgiveness review and audit activities of the Administrator under this subsection, which shall include-

(i) the number of active reviews and audits;

(ii) the number of reviews and audits that have been ongoing for more than 60 days; and

(iii) any substantial changes made to the audit plan submitted under subparagraph (A).