

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

JAMES L. DAY (WSBA #20474)
THOMAS A. BUFORD (WSBA #52969)
BUSH KORNFELD LLP
601 Union Street, Suite 5000
Seattle, WA 98101
Tel: (206) 292-2110
Email: jday@bskd.com
tbuford@bskd.com

HON. ROSANNA M. PETERSON

SAMUEL R. MAIZEL (Admitted *Pro Hac*
Vice)
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300
Fax: (213) 623-9924
Email: samuel.maizel@dentons.com

SAM J. ALBERTS (WSBA #22255)
DENTONS US LLP
1900 K. Street, NW
Washington, DC 20006
Tel: (202) 496-7500
Fax: (202) 496-7756
Email: sam.alberts@dentons.com

*Attorneys for Appellees / Cross-Appellants,
Chapter 11 Debtors and Debtors In Possession*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

ASTRIA HEALTH, *et al.*,

Debtors and Debtors in
Possession.¹

District Court Case No. 2:20-cv-3098-RMP,
Consolidated with District Court Case No. 1:20-cv-
3089-RMP

On Appeal from United States Bankruptcy Court for
the Eastern District of Washington

Bankruptcy Court Lead Case No. 19-01189-11
Chapter 11, Jointly Administered

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).



1901189210112000000000001

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES SMALL
BUSINESS ADMINISTRATION and
JOVITA CARRANZA, in her capacity
as Administrator for the United States
Small Business Administration,

Appellants /
Cross-Appellees,

v.

ASTRIA HEALTH, *et al.*,

Appellees /
Cross-Appellants.

Adversary Proceeding No. 20-80016-WLH
**REPLY BRIEF OF APPELLEES / CROSS-
APPELLANTS**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	3
I. This Appeal Should Be Dismissed As Equitably Moot.....	3
II. The Bankruptcy Court Has Subject Matter Jurisdiction.....	6
A. Congress waived the SBA’s sovereign immunity against injunctive relief here.	6
B. The Debtors’ claims are core because they stem from the bankruptcy itself.	9
III. SBA Misunderstands the Appellate Standard of Review for Preliminary Injunctions.	10
IV. PPP Funds Are Grants Within The Meaning Of § 525(a)’s “Other Similar Grant” Because They Are Uniquely Granted By the Government.....	13
V. Recent Eleventh Circuit Opinion Is Inapplicable, Nonbinding, and Wrongly Decided.....	15
VI. Recent Legislation Provides Express Authority for SBA to Include Chapter 11 Debtors in PPP.	20
CONCLUSION.....	21

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Alaska Urological Inst., P.C. v. United States Small Bus. Admin.,</i> 619 B.R. 689 (D. Alaska 2020)	9, 17, 18
<i>All. for the Wild Rockies v. Cottrell</i> 632 F.3d 1127 (9th Cir. 2011)	12
<i>American Motorcyclist Association v. Watt,</i> 714 F.2d 962 (9th Cir.1983)	12
<i>Arizona Cattle Growers' Ass'n v. U.S. Fish & Wildlife, Bureau of Land Mgmt.,</i> 273 F.3d 1229 (9th Cir. 2001)	17
<i>Barnhart v. Peabody Coal Co.,</i> 537 U.S. 149 (2003).....	13
<i>Blakely v. Washington,</i> 542 U.S. 296 (2004).....	3
<i>In re Blue Ice Investments, LLC,</i> Case No. 2:20-bk-02208-DPC (Bankr. D. Ariz.)	10
<i>Bowen v. Georgetown Univ. Hosp.,</i> 488 U.S. 204, 109 S. Ct. 468, 102 L. Ed. 2d 493 (1988).....	16
<i>Caribbean Marine Servs. Co. v. Baldrige</i> 844 F.2d 668 (9th Cir. 1988)	10, 12
<i>Castaic Partners II, LLC v. Daca-Castaic, LLC (In re Castaic Partners II, LLC),</i> 823 F.3d 966 (9th Cir. 2016)	5
<i>In re DBSI, Inc.,</i> 869 F.3d 1004 (9th Cir. 2017)	7
<i>Department of Homeland Security v. Regents of the University of California,</i> 140 S.Ct. 1891 (2020).....	17
<i>Dubrow v. Small Bus. Admin.,</i> 345 F. Supp. 4 (C.D. Cal. 1972)	8
<i>DV Diamond Club of Flint, LLC v. SBA,</i> 960 F.3d 743 (6th Cir. 2020)	7, 12, 15, 16
<i>DV Diamond Club of Flint, LLC v. United States SBA,</i> 459 F. Supp. 3d 943 (E.D. Mich. 2020)	16

1	<i>In re Eastern Niagara Hospital, Inc.,</i>	
2	Case No. 19-12342-CLB (Bankr. W.D.N.Y.)	10
3	<i>Fishing Vessels Owners Marine Ways, Inc. v. SBA,</i>	
4	Civ. No. 20-1016-RAJ [Docket No. 5] (W.D. Wash. Nov. 4, 2020)	9
5	<i>Florida Power & Light Co. v. Lorian,</i>	
6	470 U.S. 729 (1985).....	17
7	<i>In re Gateway Radiology Consultants, P.A.,</i>	
8	No. 20-13462, 2020 WL 7579338 (11th Cir. Dec. 22, 2020).....	15, 16
9	<i>Harkey v. Grobstein (In re Point Ctr. Fin., Inc.),</i>	
10	957 F.3d 990 (9th Cir. 2020)	10
11	<i>Hunsaker v. United States,</i>	
12	902 F.3d 963 (9th Cir. 2018)	6
13	<i>In re Jack Cty. Hosp. Dist.,</i>	
14	Case No. 20-40858 (Bankr. N.D. Tex.).....	10
15	<i>Krzalic v. Republic Title Co.,</i>	
16	314 F.3d 875 (7th Cir. 2002)	17
17	<i>Kuhl v. United States,</i>	
18	467 F.3d 145 (2d Cir. 2006)	6, 7
19	<i>Lands Council v. McNair,</i>	
20	537 F.3d 987 (9th Cir. 2008)	12
21	<i>Latino Issues Forum v. U.S. E.P.A.,</i>	
22	558 F.3d 936 (9th Cir. 2009)	17
23	<i>Los Angeles Memorial Coliseum Commission v. National Football League,</i>	
24	634 F.2d 1197 (9th Cir.1980)	11, 12
25	<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,</i>	
26	463 U.S. 29 (1983).....	17
27	<i>Northern Alaska Environmental Center v. Hodel,</i>	
28	803 F.2d 466 (9th Cir.1986)	11
	<i>Okla. Aerotronics v. United States,</i>	
	661 F.2d 976 (D.C. Cir. 1981).....	7
	<i>Olsen v. U.S.,</i>	
	414 F.3d 144 (1st Cir. 2005).....	17
	<i>In re Organic Power LLC,</i>	
	619 B.R. 540 (Bankr. D.P.R. 2020).....	14

1	<i>In re Penobscot Valley Hosp.,</i>	
2	Adv. No. 20-1005 (MAF) (Bankr. D. Me. May 26, 2020).....	19, 20
3	<i>Reno v. Koray,</i>	
4	515 U. S. 50 (1995).....	17
5	<i>In re Roman Catholic Church of Archdiocese of Santa Fe,</i>	
6	615 B.R. 644 (Bankr. D.N.M. 2020)	15, 19
7	<i>In re Skefos,</i>	
8	No. 19-29718-L, 2020 WL 2893413 (Bankr. W.D. Tenn. June 2, 2020).....	13, 18
9	<i>Sports Form, Inc. v. United Press International, Inc.,</i>	
10	686 F.2d 750 (9th Cir.1982)	11
11	<i>In re Springfield Hosp., Inc.,</i>	
12	618 B.R. 70 (Bankr. D. Vt.) <i>motion to certify appeal granted</i> , 618 B.R. 109	
13	(Bankr. D. Vt. 2020)	14
14	<i>Stern v. Marshall.</i>	
15	564 U.S. 462 (2011).....	9, 10
16	<i>In re Stoltz,</i>	
17	315 F.3d 80 (2d Cir. 2002)	14, 15
18	<i>In re Thorpe Insulation Co.,</i>	
19	677 F.3d 869 (9th Cir. 2012)	3, 4
20	<i>In re Transwest Resort Properties, Inc.,</i>	
21	801 F.3d 1161 (9th Cir. 2015)	3, 4
22	<i>Ulstein Mar., Ltd. v. United States,</i>	
23	833 F.2d 1052 (1st Cir. 1987).....	7, 9
24	<i>United States v. Mead Corp.,</i>	
25	533 U.S. 218 (2001).....	17
26	<i>Winter v. Nat. Res. Def. Council, Inc.,</i>	
27	555 U.S. 7 (2008) (Ginsberg, J. dissenting)	12
28	Statutes	
	5 U.S.C. § 706(2)(A)	7
	11 U.S.C. §§ 101 <i>et seq.</i>	10
	11 U.S.C. § 105.....	6
	11 U.S.C. § 106.....	6

1	11 U.S.C. § 106(a)(1)	7
2	11 U.S.C. § 364(b).....	5
3	11 U.S.C. § 365.....	5
4	11 U.S.C. § 503(b).....	4, 5
5	11 U.S.C. § 525.....	6, 13
6	11 U.S.C. § 525(a)	9, 13, 14, 15
7	15 U.S.C. § 634(b).....	7, 8
8	15 U.S.C. § 634(b)(1)	6, 8, 9
9	15 U.S.C. § 634(b)(6)-(7)	16
10	15 U.S.C. § 636(a)(6)	16, 18
11	15 U.S.C. § 636(a)(36)(D)(i)	15
12	15 U.S.C. § 9005(d)(8)	3
13	15 U.S.C. § 9012.....	16
14	28 U.S.C. § 157(a)	10
15	28 U.S.C. § 157(b)(1)	10
16	28 U.S.C. § 157(b)(2)(A).....	10
17	28 U.S.C. § 157(d).....	9
18	28 U.S.C. § 1334(a)	10
19	28 U.S.C. § 1334(b).....	10
20	28 U.S.C. § 1334(c)(1)	10
21	Rules and Regulations	
22	Fed. R. Bankr. P. 8002.....	2
23	Fed. R. Bankr. P. 8016(c)(4).....	15
24	Local R. Civ. P. 83(5)(a)	10
25	13 CFR § 120.110.....	20
26	13 CFR § 120.150.....	16, 19
27		
28		

1	85 Fed. Reg. 21,750	18
2		
3	Other Authorities	
4	H.R. 133 (116th): H.R. 133: Consolidated Appropriations Act, 2021	20
5	H.R. 133 (116th): H.R. 133: Consolidated Appropriations Act, 2021, § 320	20
6	S. Rep. 95-989, 81, 1978 U.S.C.C.A.N. 5787, 5867	13, 14
7	1 COLLIER PAMPHLET EDITION 2020, p. 525 (Richard Levin & Henry J. Sommer, eds., Matthew Bender)	13
8		
9	Jean C. Love, <i>Teaching Preliminary Injunctions After Winter</i> , 57 ST. LOUIS U. L. J. 3 (2013), available at https://scholarship.law.slu.edu/lj/vol57/iss3/11	12
10	Shane Shifflett, <i>Hundreds of Companies That Got Stimulus Aid Have Failed:</i> <i>Recipients of PPP Loans Have Filed for Bankruptcy After the Money Ran Out</i> , WSJ (Updated November 17, 2020 at 9:45 a.m. ET)	18

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

INTRODUCTION

In its response and reply brief filed on December 4, 2020 [Docket No. 018]² (the “SBA Reply”), the SBA³ raises several arguments that fail carry the critical issue on appeal: that is, whether the Bankruptcy Court abused its discretion in granting the Debtors’ request for preliminary injunction until the Bankruptcy Court could conduct a trial on the merits of the Debtors’ claims. The answer should be a resounding “no,” as the Bankruptcy Court was well within its discretion to grant the preliminary injunction and had sufficient basis to issue the Order. As will be demonstrated herein, none of the arguments raised in the SBA Reply demonstrate the contrary nor justify reversal of the preliminary injunction.

Moreover, there have been several developments that further undercut the SBA’s position and warrant a prompt denial of this appeal. First, on the same day the SBA filed the SBA Reply here, the Department of Justice and United States Attorney filed an objection to confirmation of the Debtors’ *Modified Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor Affiliates* [ECF No. 2196] (including all exhibits thereto, any plan supplement, and as amended, modified, or supplemented from time to time, the “Plan”) of reorganization on behalf of SBA and certain other agencies. *See Objection to Confirmation of Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor Affiliates* 7 [ECF No. 2077] (the “Plan Objection”). The Plan Objection raised on behalf of the SBA was largely predicated on the contention that the then-pending (and now confirmed) Chapter 11 Plan did not provide adequate treatment of the SBA’s “contingent claim on account of its guarantee” of the PPP funds.

² References to “Docket No. ____” means the docket in this appeal. References to “Adv. Pro. Docket No. ____” means the docket in the Debtors’ adversary proceeding before the Bankruptcy Court. References to “ECF No. ____” means the docket in the main underlying Bankruptcy Case.

³ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Debtors’ Opening and Response [Docket No. 14] (the “Debtors’ Opening and Response”).

1 *Id.* at 4-7. By asserting this alleged contingent claim and filing an objection thereon, the SBA
2 further submitted themselves to the jurisdiction of the Bankruptcy Court, in turn undermining
3 their assertion that the injunction was a noncore matter that should not have been adjudicated by
4 the Bankruptcy Court.
5

6 Further demonstrating mootness however is the *Order Confirming the Second Amended*
7 *Joint Plan of Reorganization of Astria Health and its Debtor Affiliates* entered on December 23,
8 2020 [ECF No. 2217] (the “Confirmation Order”). This action alone undercuts the SBA’s
9 contention that equitable mootness does not exist because plan confirmation has not occurred.
10 SBA Reply at 8. Moreover, equitable mootness is further solidified by the fact that the
11 Confirmation Order was not timely appealed within fourteen (14) days as required by Bankruptcy
12 Rule 8002, will become effective no later than January 16, 2020 (unless the deadline is extended
13 by agreement of the parties), and be substantially consummated by that same date.
14

15 Of perhaps even greater importance is that the Confirmation Order at 63-64, expressly
16 resolved the SBA Objection by focusing the central issue to a straight-forward question of
17 whether the loan at issue is forgivable. While the Confirmation Order states that its entry and
18 terms do not *per se* affect this appeal, the very fact that the critical issue has been reduced to a
19 question of whether the PPP funds are forgivable—a determination that can be made by the
20 Bankruptcy Court relying on the SBA’s guidelines as to whether the funds were used by the
21 Debtors in accordance with the forgiveness requirements—should render any valid purpose of
22 this appeal moot.
23
24
25
26
27
28

ARGUMENT**I. This Appeal Should Be Dismissed As Equitably Moot.**

The *actual*⁴ issue before this Court—the appeal of the Bankruptcy Court’s grant of a preliminary injunction in its Order and Oral Ruling—is equitably moot, and the Debtors have met their burden of so demonstrating. The SBA, through counsel, acknowledged this fact from the outset at the hearing on the preliminary injunction, pleading for a stay pending appeal because “it would be very difficult to unscramble that egg.” Hearing Transcript at 125, ln. 2-3. Backtracking from this acknowledgement, the SBA now argues that this Court has the ability to provide effective relief (SBA Reply at 17-18); however, equitable mootness is not contingent upon an inability to provide relief, but rather on a court’s unwillingness to provide relief under the circumstances (*In re Transwest Resort Properties, Inc.*, 801 F.3d 1161, 1167 (9th Cir. 2015)). Indeed, through their Opening and Response Brief, the Debtors have already demonstrated all four factors for dismissing this appeal have been met: (1) the SBA lacked diligence in fully pursuing its rights to seek a stay; (2) the Order and Oral Ruling have been substantially consummated;⁵ (3) any remedy this Court could devise will significantly and negatively impact

⁴ The SBA’s real—but impermissible—purpose in this appeal is to have this Court effectively deny the Debtors’ right to *forgiveness* of the PPP funds, despite the fact that the Debtors have used 100% of the PPP funds for wages (*i.e.*, in accordance with 15 U.S.C. § 9005(d)(8)) and despite the fact that the Debtors’ right to forgiveness *is not actually before this Court*. See generally, *Blakely v. Washington*, 542 U.S. 296, n.9 (2004) (declining to decide an issue not before the Court despite request by party-in-interest to address it). Nevertheless, the Debtors anticipate submitting their applications for forgiveness of the PPP funds (the “Forgiveness Applications”) as soon as Banner Bank begins allowing submissions. Because the Debtors have complied with the CARES Act’s forgiveness requirements, the Debtors have no repayment obligations.

⁵ The SBA misunderstands *In re Thorpe*. See SBA Reply/Response Brief at 17 (assuming that the order at issue must be an *order confirming a plan of reorganization*). *In re Thorpe* set forth the standard for determining equitable mootness in relation to bankruptcy orders generally and applied it to a confirmation order specifically. *In re Thorpe Insulation Co.*, 677 F.3d 869, 880 (9th Cir. 2012) (equitable mootness “has some sway in bankruptcy cases where public policy

1 third parties not before the Court; and (4) granting the relief will create an uncontrollable situation
 2 for the Bankruptcy Court. *Motor Veh. Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation*
 3 *Co.)*, 677 F.3d 869, 881 (9th Cir. 2012).
 4

5 First, the SBA's failure to file a written motion for stay pending appeal with *this Court*
 6 demonstrates sufficient lack of diligence. *See generally, In re Transwest Resort*, 801 F.3d at 1168
 7 (indicating that failure to fully pursue one's rights is a factor in favor of finding equitable
 8 mootness). Additionally, the SBA has had multiple opportunities to expedite resolution of this
 9 matter, but chose not to do so. For example, despite the fact that the Bankruptcy Court certified
 10 this appeal for the United States Court of Appeals for the Ninth Circuit [Adv. Pro. Docket No.
 11 22], the SBA filed its appeal with this Court.
 12

13 Second, in the meantime, not only have the PPP funds already been distributed months
 14 ago pursuant to the Order and Oral Ruling, but the Bankruptcy Court has also, at the SBA's
 15 request,⁶ entered the Confirmation Order, providing for—among other things—the treatment of
 16 the PPP funds *if* there is a final determination that repayment of any portion of the PPP funds is
 17
 18
 19

20 values the finality of bankruptcy judgments because debtors, creditors, and third parties are
 21 entitled to rely on a final bankruptcy court order"). The order at issue here is the Order and Oral
 22 Ruling, not the December 23, 2020 order confirming the Debtors' plan of reorganization [Bankr.
 Docket No. 2217 at 63-64] (the "Confirmation Order"). In any event, the Confirmation Order has
 also been entered.

23 ⁶ The SBA filed an objection to confirmation of the Debtors' plan of reorganization, demanding
 24 that the Debtors set aside the full amount of the PPP funds in a reserve account on the effective
 25 date, despite the fact that the terms of the PPP funds provide otherwise. [Bankr. Docket No.
 26 2077]. As a compromise, the Debtors agreed to add certain language to the Confirmation Order
 27 preserving the SBA's rights; however, neither the SBA or Banner Bank holds an allowed
 28 administrative expense claim, since § 503(b) and Ninth Circuit case law provides this status only
 to *actual* expenses of the estate. Note: All references to "section" or "§" refer to the Bankruptcy
 Code unless otherwise stated herein.

1 required at some point in the future.⁷ At this point, the status quo has been preserved and the
 2 SBA would not be harmed by this Court dismissing this appeal and allowing the matter to
 3 proceed before the Bankruptcy Court.
 4

5 Finally, other considerable and significant changes of circumstances have occurred that
 6 both would significantly and detrimentally impact third parties and would create an
 7 uncontrollable situation for the Bankruptcy Court. *Castaic Partners II, LLC v. Dacca-Castaic,*
 8 *LLC (In re Castaic Partners II, LLC)*, 823 F.3d 966, 968 (9th Cir. 2016) (“Equitable mootness
 9 concerns whether changes to the status quo following the order being appealed make it
 10 impractical or inequitable to unscramble the eggs.”). For example, since the PPP funds were
 11 disbursed, the Debtors have made certain employee retention decisions *in reliance on* the fact that
 12 the PPP funds would be forgiven if/because they were used to pay employee wages.
 13 Furthermore, on the eve of confirmation, the Debtors filed the Plan that contemplates the Debtors
 14 expending a majority of their cash cushion, plus \$75 million in exit financing, to pay off their
 15 primary secured creditor in full on January 15, 2020, rather than paying such obligations over a
 16 period of years. Additionally, since December 23, 2020, the Debtors have begun paying
 17 significant obligations (*i.e.*, millions of dollars) pursuant to the Plan, including, *inter alia*,
 18 outstanding administrative expense claims under § 503(b) and cure amounts necessary to assume
 19 various contracts under § 365. These are all vital to the Debtors’ reorganization.
 20
 21

22 As the SBA admits, “[t]he principal question for equitable mootness is whether the appeal
 23 ‘present[s] transactions that are so complex or difficult to unwind that the doctrine of equitable
 24 mootness would apply’” (SBA Reply at 15 (citations omitted)), and yet, despite these numerous
 25

26 ⁷ The SBA erroneously states that 11 U.S.C. § 364(b) is applicable to the Debtors and the PPP
 27 funds at issue here. It is not, as no such motion, notice, or hearing on the same was ever
 28 requested or required. Indeed, PPP funds are a grant and not a loan.

1 and complex transactions that place the Debtors in a considerably different position than the one
2 in which they found themselves on the day this appeal began, the SBA is essentially requesting
3 this Court to jeopardize those obligations and the finality of the Confirmation Order. This is
4 untenable and unfair to every other party in interest in the Debtors bankruptcy proceedings. So,
5 equitably speaking, this appeal is moot, and the Court should allow the parties' agreement to
6 stand, as stated in the Confirmation Order (*i.e.*, to repay the PPP funds, if at all, at the times
7 specified in the PPP documents).
8

9 **II. The Bankruptcy Court Has Subject Matter Jurisdiction.**

10 The SBA maintains its argument that the Bankruptcy Court lacked subject matter
11 jurisdiction (i) because Congress has not waived sovereign immunity, citing a Second Circuit
12 case, *Kuhl v. United States*, 467 F.3d 145 (2d Cir. 2006),⁸ and (ii) because the Bankruptcy Court
13 lacked authority to adjudicate the Debtors' claims, which the SBA contends are all non-core. The
14 SBA is wrong on both counts for all the reasons cited in the Debtors Opening and Response Brief
15 [Docket No. 14] and as detailed herein. *See also* Order and Oral Ruling at 2; 19-22.
16

17 **A. Congress waived the SBA's sovereign immunity against injunctive** 18 **relief here.**

19 Congress waived the SBA's sovereign immunity under §§ 105, 106, and 525 of the
20 Bankruptcy Code and § 634(b)(1) of title 15 of the United States Code. First, the SBA's
21 argument that sovereign immunity hasn't been waived by §§ 105, 106, and 525 does not survive
22 even cursory review, as § 106 expressly and unambiguously waives sovereign immunity as to §§
23 105 and 525 claims. *See Hunsaker v. United States*, 902 F.3d 963, 966 (9th Cir. 2018) (Section
24 106 "authorizes a court to "issue against a governmental unit an order, process, or judgment under
25

26
27 ⁸ The SBA incorrectly cited this case, leaving out the "2d Cir." reference. It is not a Supreme
28 Court decision.

1 such sections ... , including an order or judgment awarding a money recovery, but not including
2 an award of punitive damages.”); *In re DBSI, Inc.*, 869 F.3d 1004, 1010 (9th Cir. 2017) (“Section
3 106(a)(1) unambiguously abrogates the federal government's sovereign immunity” with respect to
4 the enumerated sections); *see also* Order and Oral Ruling at 16-17. In any event, *Kuhl* is
5 nonbinding and is inapplicable because the statute at issue there required the debtor to exhaust her
6 administrative remedies before attempting suit in federal court. *Kuhl*, 467 F.3d at 149. No such
7 requirement exists here.
8

9
10 Second, while the Debtors do not argue that there are not certain circumstances wherein
11 the SBA may not be enjoined, 15 U.S.C. § 634(b) does not provide blanket immunity from every
12 injunction such is not the case here, such as what is at issue here. *See Ulstein Mar., Ltd. v. United*
13 *States*, 833 F.2d 1052, 1057 (1st Cir. 1987) (“The no-injunction language of [section 634(b)] . . .
14 does not provide blanket immunity from every type of injunction. In particular, it should not be
15 interpreted as a bar to judicial review of agency actions that exceed agency authority where the
16 remedies would not interfere with internal agency operations”); *Okla. Aerotronics v. United*
17 *States*, 661 F.2d 976, 977 (D.C. Cir. 1981) (stating SBA’s sovereign immunity and injunctive
18 relief arguments are “irrelevant” when the SBA commits “egregious procedural errors”
19 amounting to violations such as 5 U.S.C. § 706(2)(A) claims related to an entity’s participation in
20 a Section 8(a) program); *see also* Order and Oral Ruling at 20-22. Moreover, the Sixth Circuit
21 presumably assumed without deciding that the SBA’s sovereign immunity was waived and that
22 injunctive relief is available against the SBA under these circumstances. *See DV Diamond Club*
23 *of Flint, LLC v. SBA*, 960 F.3d 743, 747 (6th Cir. 2020) [hereinafter *Diamond*] (not even
24 addressing the SBA’s concerns about sovereign immunity and ruling in favor of the PPP
25 applicant).
26
27
28

The SBA erroneously claims *Dubrow* is (a) merely *dicta*, and (b) weighs in the SBA's favor. *See* SBA Reply at 30 (erroneously arguing that because the *Dubrow* court did not grant an injunction, anything relevant to its injunctive analysis is mere *dicta* and that the court's failure to grant an injunction in that case means the Court should not grant an injunction in this case). First, the *Dubrow* court specifically disregarded the SBA's argument that the court lacked jurisdiction to grant any injunction ever: "It should be clear, however, that when the Administrator acts beyond the scope of his authority 15 U.S.C. § 634(b) does not preclude injunctive action." *Dubrow v. Small Bus. Admin.*, 345 F. Supp. 4, 7 and n.5 (C.D. Cal. 1972) (pointing out that 15 U.S.C. § 634(b)'s "language precluding injunctive action against the administrator is qualified by the introductory clause . . . '(b) In the performance of, and with respect to the functions, powers and duties vested in him by this chapter ...'"). This rule is not *dicta*, but rather, such rule was vital to the court analyzing the APA claims in the first place, because if there was a complete bar on injunctive relief against the SBA, the court would not have had authority to analyze whether the SBA had abused its discretion in that instance.

Second, the reason the *Dubrow* court decided to not grant the injunctive relief there is inapplicable here. There, the SBA provided a thorough explanation for why it acted in its discretion in denying that loan application. Here, there is no explanation, other than the one line from the Fourth Interim Rule, which, as the Bankruptcy Court pointed out, is no explanation at all. *See* Order and Oral Ruling at 25-29.

Thus, while the Ninth Circuit has not ruled on this issue, other district courts in the Ninth Circuit support this exception to the anti-injunction clause, *e.g.*, when the SBA exceeds its agency authority or when such injunction does not interfere with the SBA's internal workings:

[W]here "a disgruntled bidder, borrower, or other party involved in a particular transaction, asserts that SBA exercised its discretion poorly ... in that particular transaction," § 634(b)(1) protects the SBA from injunctive relief. But, in contrast,

1 . . . it does not protect the SBA from injunctive relief where the SBA's rulemaking
2 exceeds its agency authority.

3 *Alaska Urological Inst., P.C. v. United States Small Bus. Admin.*, 619 B.R. 689, 698 (D. Alaska
4 2020).

5
6 As the First Circuit has recognized, this limitation . . . was "intended to keep
7 creditors or others suing the government from hindering and obstructing agency
8 operations through mechanisms such as attachment of funds." *Ulstein Maritime,*
9 *Ltd. v. United States*, 833 F.2d 1052, 1056-57 (1st Cir. 1987). It was not intended
10 to render the agency immune from injunctive relief in situations where the agency
11 has exceeded its statutory authority and where an injunction would not interfere
12 with the agency's internal operations. *Id.* at 1057. Indeed, if provisions such as
13 § 634(b)(1) meant that the agency could never be enjoined, then an agency could
14 adopt unconstitutional policies and continue to follow them even after a court
15 declared them unconstitutional. For example, the SBA could adopt a policy
16 stating that it will extend small business loans only to companies owned by white
17 men. If § 634(b)(1) means that the SBA may never be enjoined, then a court could
18 not enjoin this policy, even though it would be blatantly unconstitutional.

19 *DV Diamond Club of Flint, LLC v. United States SBA*, 459 F. Supp. 3d 943, 953 (E.D. Mich.
20 2020) (citing *Camelot Banquet Rooms*, 2020 U.S. Dist. LEXIS 76713, 2020 WL 2088637, at **
21 3-4). Thus, Congress has waived sovereign immunity for the Debtors' § 525(a) claims and APA
22 claims.

23
24 **B. The Debtors' claims are core because they stem from the bankruptcy
25 itself.**

26 It is an anathema why the SBA continues to argue that the Bankruptcy Court lacked
27 authority to adjudicate the Debtors' claims that they were unlawfully excluded solely because of
28 their status as debtors in bankruptcy.⁹ These claims are core because they stem from the

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

⁹ The SBA references the District Court for the Western District of Washington decision on a motion for withdrawal of reference pursuant to 28 U.S.C. § 157(d). *Fishing Vessels Owners Marine Ways, Inc. v. SBA*, Civ. No. 20-1016-RAJ [Docket No. 5] (W.D. Wash. Nov. 4, 2020). However, such reliance is far from dispositive. The opinion contains no reasoning, meaning the opinion is neither binding nor persuasive. As the matter presently before the Court in this appeal is not a motion for withdrawal of reference, actual analysis is required for this Court to overrule the preliminary injunction at issue here, under Ninth Circuit precedent and under *Stern v.*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

bankruptcy itself and concern the administration of the bankruptcy estate. 28 U.S.C. § 157(b)(1) and -(b)(2)(A); *Stern v. Marshall*, 564 U.S. 462, 499 (2011); *Harkey v. Grobstein (In re Point Ctr. Fin., Inc.)*, 957 F.3d 990 (9th Cir. 2020); *see also* Order and Oral Ruling at 19 (“This is a dispute within the final adjudicatory power of this court. The entire dispute ‘at issue stems from the bankruptcy itself,’ which means this court can properly exercise the judicial power needed to resolve it.”). The SBA mischaracterizes these claims as having only a “but for” connection to bankruptcy (SBA Reply)—however, even assuming *arguendo* that is *always* insufficient, that the connection here is unquestionably direct and is “because of” the bankruptcy proceeding itself. The substantive rights implicated here are the Debtors’ very access to *any* relief under title 11 of the United States Code, §§ 101 *et seq.* (the “Bankruptcy Code”). Indeed, as many debtors have recognized, under the SBA’s arbitrary rule, debtors can either (i) continue with their bankruptcy proceedings but forego access to PPP funds (of course, without injunctive relief), or (b) dismiss their cases and pursue PPP funds. *See e.g., In re Blue Ice Investments, LLC*, Case No. 2:20-bk-02208-DPC (Bankr. D. Ariz.); *In re Eastern Niagara Hospital, Inc.*, Case No. 19-12342-CLB (Bankr. W.D.N.Y.); *In re Jack Cty. Hosp. Dist.*, Case No. 20-40858 (Bankr. N.D. Tex.).

III. SBA Misunderstands the Appellate Standard of Review for Preliminary Injunctions.

Although the Debtors met the legal standard for the Bankruptcy Court to enter the Order and Oral Ruling, the SBA misunderstands the appellate standard of review, confusing de novo review to identify the correct legal standard with de novo review of the entire decision to grant a

Marshall. 564 U.S. at 499 (“the question is whether the action at issue stems from the bankruptcy itself”). Similarly, the SBA’s argument that several suits against the SBA originated in district courts rather than bankruptcy courts is equally non-dispositive, since district courts have original and exclusive jurisdiction of all cases under or in title 11 (which this Court specifically referred to the Bankruptcy Court (28 U.S.C. § 157(a) and Local Civil Rule 83(5)(a) of this Court), and since a bankruptcy court may, under the right circumstances, abstain from hearing even core matters. 28 U.S.C. § 1334(a), -(b), and -(c)(1).

1 preliminary injunction. SBA Reply at 13-14. The two concepts are not the same. *Caribbean*
2
3 *Marine Servs. Co. v. Baldrige* is particularly instructive:

4 When reviewing an order issuing a preliminary injunction, an appellate court must
5 determine whether the district court applied the proper legal standard in issuing the
6 injunction and whether it abused its discretion in applying that standard. An
7 injunction may also be set aside if the district court misapprehended the law in its
8 preliminary assessment of the merits, or premised its conclusions on clearly
erroneous findings of fact. Absent one of these errors, the district court's decision
will not be reversed merely because the appellate court would have arrived at a
different result if it had initially applied the law to the facts of the case.

9 Because our review of the district court's decision is generally limited to whether
10 the district court abused its discretion, our disposition of an appeal from
a preliminary injunction ordinarily will not dispose of the merits of the litigation.
11 "Because of the limited scope of our review of the law applied by the district court
and because the fully developed factual record may be materially different from
12 that initially before the district court, our disposition of appeals from
most preliminary injunctions may provide little guidance as to the appropriate
13 disposition on the merits."

14 . . . To the extent that a desire to get an early glimpse of our view of the merits of
the underlying legal issues in this litigation motivated this tactic, it was both
15 misconceived and wasteful. A preliminary injunction is, as its name implies,
16 preliminary to the trial—not to an appeal. . . . [W]e may do no more than
determine whether the district court abused its discretion in determining that
17 serious legal questions were raised and that the balance of hardships tipped sharply
in favor of the owners and crew. Our resolution of these issues will not determine
18 the merits of the underlying legal issues presented in this litigation, and will only
temporarily affect the rights of the parties. When the district court renders its
19 judgment on the merits of these cases, the losing party may again appeal. . . .

20 We now consider the question whether the district court abused its discretion in
21 granting the preliminary injunction in this action. Identifying the proper test that
should be applied by the district court is not always easy. Our cases have
22 emphasized, however, that when the public interest is involved, it must be a
necessary factor in the district court's consideration of whether to
23 grant preliminary injunctive relief. Thus, under the "traditional test" typically used
in cases involving the public interest, the district court should consider (1) the
24 likelihood that the moving party will prevail on the merits, (2) whether the balance
of irreparable harm favors the plaintiff, and (3) whether the public interest favors
25 the moving party. We have allowed the district court some latitude in assessing
the first two factors as it fashions appropriate relief. . . . [W]e have stated that
26 where the balance of hardships tips decidedly toward the plaintiff, the district court
need not require a robust showing of likelihood of success on the merits, and may
27 grant preliminary injunctive relief if the plaintiff's moving papers raise "serious
28

questions” on the merits. This latter formulation is known as the “alternative test.” Under either test, however, the district court must consider the public interest as a factor in balancing the hardships when the public interest may be affected.

844 F.2d 668, 673–74 (9th Cir. 1988) (internal citations omitted); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 51 (2008) (Ginsberg, J. dissenting) (pointing out unopposed that the majority merely rejected the “possibility” portion of the Ninth Circuit’s “sliding scale” test, not the “sliding scale” test altogether); Jean C. Love, *Teaching Preliminary Injunctions After Winter*, 57 ST. LOUIS U. L. J. 3 (2013), available at <https://scholarship.law.slu.edu/lj/vol57/iss3/11>. *All. for the Wild Rockies v. Cottrell* further explains:

The majority opinion in *Winter* did not, however, explicitly discuss the continuing validity of the “sliding scale” approach to preliminary injunctions employed by this circuit and others. Under this approach, the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another. . . . This circuit has adopted and applied a version of the sliding scale approach under which a preliminary injunction could issue where the likelihood of success is such that “serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *Id.* That test was described in this circuit as one alternative on a continuum. *See, e.g., Lands Council*, 537 F.3d at 987. The test at issue here has often been referred to as the “serious questions” test. We will so refer to it as well.

632 F.3d 1127, 1131 (9th Cir. 2011). In light of the foregoing, then, this Court is not permitted at this stage to determine the merits of the underlying litigation; rather, the Court “may do no more than determine whether the [Bankruptcy Court] abused its discretion in determining that serious legal questions were raised.” *Baldrige* at 673-74; *see also Cottrell* at 1131. Finally, even assuming *arguendo* that the Ninth Circuit hasn’t reaffirmed a sliding scale after *Winter* (which it has), a Sixth Circuit decision highlights that an appellate court’s review of a preliminary injunction decision is limited to “governing law.” *DV Diamond Club of Flint, LLC v. SBA*, 960 F.3d 743, 746 (6th Cir. 2020) (emphasis added). There is no Ninth Circuit case precisely on

1 point, meaning the Bankruptcy Court did not abuse its discretion in deciding all but one discrete
 2 issue in the manner it did.

3
 4 **IV. PPP Funds Are Grants Within The Meaning Of § 525(a)'s "Other Similar Grant" Because They Are Uniquely Granted By the Government.**

5 The Bankruptcy Court held that the Debtors had met every element of their § 525(a)
 6 claim, except that the Bankruptcy Court questioned whether PPP funds (which the Bankruptcy
 7 Court conceded were "money grants" (Order and Oral Ruling at 10-17)) were an "other similar
 8 grant" within the meaning of § 525(a). Based on the Bankruptcy Court's erroneous conclusion
 9 that PPP funds are not uniquely granted by the government, the Bankruptcy Court denied granting
 10 preliminary injunctive relief based on § 525(a). Therefore, the Debtors only task on this front is
 11 to show that the PPP funds are an "other similar grant" within the meaning of § 525(a) because
 12 PPP funds are uniquely granted by the government. Indeed, "the PPP is unlike any other
 13 government program previously analyzed under section 525." *In re Skefos*, No. 19-29718-L,
 14 2020 WL 2893413, at *14 (Bankr. W.D. Tenn. June 2, 2020).
 15

16
 17 Indeed, the SBA would have this Court construe § 525(a) too narrowly, too, based on the
 18 fact that "the exclusion of loans from the enumerated list precludes [the Debtors'] claim." SBA
 19 Reply at 18 (citing *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003)). However, this
 20 assumption is wrong on two points. First, § 525(a)'s "list" is not an "enumerated" or
 21 "exhaustive" list or one that would "permit other forms of discrimination," and Congress
 22 specifically contemplated that courts would work to develop a body of case law aimed at limiting
 23 or prohibiting governmental discrimination against debtors in bankruptcy. *See* 1 COLLIER
 24 PAMPHLET EDITION 2020, p. 525 (Richard Levin & Henry J. Sommer, eds., Matthew
 25 Bender); S. Rep. 95-989, 81, 1978 U.S.C.C.A.N. 5787, 5867. Second, the full quoted language in
 26 *Barnhart* actually stands for the exact *opposite* premise of what the SBA says it does:
 27
 28

As we have held repeatedly, the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an “associated group or series,” justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence.

Id.

Moreover, contrary to the Bankruptcy Court’s conclusion, while commercial loans are readily available in the marketplace,

the CARES Act was not enacted to increase the availability of commercial loans. Rather, it includes stimulus funds designed to assist businesses and ensure American workers continue to be paid, despite the economic impact of Covid-19 and social distancing measures (UMF ¶5). The CARES Act establishes the PPP as a convertible loan program with no repayment obligations for PPP disbursements if, among other things, the funds are used for payroll and wage expenses (*id.*).

In re Springfield Hosp., Inc., 618 B.R. 70, 89 (Bankr. D. Vt.) *motion to certify appeal granted*, 618 B.R. 109 (Bankr. D. Vt. 2020). “This isn’t a loan program. This is a support program.” *Id.* at 90 (citations omitted); *see also In re Organic Power LLC*, 619 B.R. 540, 548 (Bankr. D.P.R. 2020) (“the PPP should be treated as a grant program for purposes of section 525(a)”). Indeed, “Congress designed, and expected, that PPP loans would be forgiven.” *In re Organic Power LLC*, 619 B.R. at 548.

While nominally designated as a ‘loan,’ the unique features of the PPP, including a lack of any underwriting and a repayment obligation that only arises if the borrower fails to use the funds for purposes underlying the CARES Act, distinguish it from the commercial extension of credit at issue in *Goldrich*. These same features render the PPP analogous to the public housing lease at issue in *Stoltz*.

In re Springfield Hosp., Inc., 618 B.R. at 89. “While public housing leases and the PPP are superficially similar to private sector activity – a residential lease and an extension of credit, respectively – they confer unique benefits impossible to obtain from the private sector. Just as private lessors do not offer subsidized or free housing, private lenders do not offer free money.” *Id.* at 90-91. Indeed, “[t]he common qualities of the property interests protected under section 525(a), *i.e.*, ‘license[s], permit[s], charter[s], franchise[s], and other similar grants,’ are that these

property interests are unobtainable from the private sector and essential to a debtor’s fresh start.” *In re Roman Catholic Church of Archdiocese of Santa Fe*, 615 B.R. 644, 656 (Bankr. D.N.M. 2020) (citing *In re Stoltz*, 315 F.3d 80, 90 (2d Cir. 2002)). “The target grant recipients are small businesses in financial distress. The PPP could only be offered by the government; private lenders do not give away money. . . . Of all the benefits a government can grant, free money might be the best of all. Denying Plaintiff access to PPP funds solely because it is a debtor violates § 525(a).” *Id.*, 615 B.R. at 657. Thus, on this one discrete issue, the Bankruptcy Court erroneously construed the item being compared to the list provided in § 525(a). The correct standard is not the comparison of commercial loans to the list, but rather the comparison of a grant of free money by the government to the list in § 525(a). When properly framed, the Debtors have a substantial likelihood of success on the merits of their § 525(a) claims.

V. Recent Eleventh Circuit Opinion Is Inapplicable, Nonbinding, and Wrongly Decided.

On January 1, 2020, the SBA filed a *Notice of Supplemental Authority* [Docket No. 21] (the “Notice”), citing the recent United States Court of Appeals for the Eleventh Circuit opinion on PPP funds. *In re Gateway Radiology Consultants, P.A.*, No. 20-13462, 2020 WL 7579338, at *1 (11th Cir. Dec. 22, 2020) [hereinafter *Gateway*]. Therefore, it is appropriate to address such issues here notwithstanding Rule 8016(c)(4) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Not only is *Gateway* inapplicable and nonbinding, but it was wrongly decided. *See e.g., Diamond*, 960 F.3d 743 (reviewing the relevant portions of the CARES Act and the Small Business Act and concluding just the opposite of *Gateway*). Most notably, *Diamond* concluded Congress’s use of “any” in the phrase “any business concern . . . shall be eligible to receive a covered loan . . .” actually means “any.” *Diamond*, at 747 (citing 15 U.S.C. § 636(a)(36)(D)(i)). Similarly important is that the Sixth Circuit presumably assumed without deciding that injunctive relief *is* available against the SBA under these circumstances. *See*

Diamond; see also *DV Diamond Club of Flint, LLC v. United States SBA*, 459 F. Supp. 3d 943, 954 (E.D. Mich. 2020).

Indeed, *Gateway* is factually distinguishable from the case at bar here. For example, here, the Debtors (a) filed their PPP Applications (April 17, 2020) *prior to* the SBA proposing the Fourth Interim Rule (April 24, 2020) (see Adv. Pro. Docket No. 1 at ¶¶ 43 and 51; *but see Gateway* at *4), and (b) had express permission from the Bankruptcy Court to either (i) strike “or presently involved in any bankruptcy” from the PPP Applications’ Question 1, or (ii) mark the box “no” if the Debtors satisfied all other conditions of Question 1 (Adv. Pro. Docket No. 22; *but see Gateway* at *4). *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208, 109 S. Ct. 468, 471, 102 L. Ed. 2d 493 (1988) (“Retroactivity is not favored in the law. Thus, . . . administrative rules will not be construed to have retroactive effect unless their language requires this result.”). Moreover, the Eleventh Circuit makes much of the fact that although the First Interim Rule “did not specify that all bankruptcy debtors are ineligible, [] it did state that applicants are required to submit SBA Form 2483, which is the PPP application form.” *Gateway*, 2020 WL 7579338, at *3 (assuming sufficient rulemaking occurred when the *form alone* asked whether the applicant is “presently in any active bankruptcy”). This gets the SBA exactly nowhere, since a rule without reason is a baseless rule. There are several other flawed premises on which *Gateway* is based: (1) that the SBA considered “sound value” or a recipients “creditworthiness” (*Gateway* at *2-*3 (citing 15 U.S.C. § 636(a)(6) and 13 CFR § 120.150)); (2) that Congress’s delegation of rulemaking authority made the SBA’s decisions irreproachable or that the speed by which the SBA implemented the PPP program somehow obviated the need for reasoned decision making (*Gateway* at *2-*3 (citing 15 U.S.C. §§ 634(b)(6)-(7) and 9012)); and (3) that Congress’s intentional proscription against debtors in bankruptcy status for its mid-sized program doesn’t demonstrate that lack of such proscription in the PPP is meaningful (*Gateway* at *12).

Whether or not Congress demanded the SBA implement the PPP posthaste, the SBA is held to a certain standard: rulemaking having the force of law must have a degree of consistency and must have a “rational connection”¹⁰ to hard facts, must be relatively well-reasoned, must be based on relative expertness, and must be supported by persuasive argument. *See United States v. Mead Corp.*, 533 U.S. 218, 227 (2001); *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) *Reno v. Koray*, 515 U. S. 50, 61 (1995) (internal agency guideline that is not “subject to the rigors of the [APA], including public notice and comment” is entitled only to “some deference” (internal quotation marks omitted)); *Latino Issues Forum v. U.S. E.P.A.*, 558 F.3d 936, 941 (9th Cir. 2009); *Arizona Cattle Growers’ Ass’n v. U.S. Fish & Wildlife, Bureau of Land Mgmt.*, 273 F.3d 1229, 1236 (9th Cir. 2001); *Krzalic v. Republic Title Co.*, 314 F.3d 875, 881 (7th Cir. 2002) (requiring deliberation and not simply an announcement of a rule); *see also Department of Homeland Security v. Regents of the University of California*, 140 S.Ct. 1891 (2020); *Florida Power & Light Co. v. Lorian*, 470 U.S. 729, 744 (1985); *Olsen v. U.S.*, 414 F.3d 144, 155 (1st Cir. 2005).

Moreover, had this been a normal Section 7(a) loan program, the SBA would have considered whether the applicant was creditworthy or whether granting each particular the loan was of “such sound value or so secured as reasonably to assure repayment”, but this is not a normal Section 7(a) loan program and the SBA decidedly did not consider these factors. It is not an understatement to say that Congress and the SBA gutted the Section 7(a) loan program as applied to the PPP, and to argue otherwise now (or even in the Fourth Interim Rule) is disingenuous, post hoc rationalization that cannot carry the day. *See e.g., Alaska Urological Inst., P.C. v. United States Small Bus. Admin.*, 619 B.R. 689, 709-10 (D. Alaska 2020). To state this in

¹⁰ Note: The rational connection requirement under *State Farm* should not be confused with rational basis, which is a wholly separate Due Process Clause standard. 463 U.S. at n.9.

the opposite manner illustrates the complete absurdity of the SBA's position: Anyone not currently in bankruptcy *must be* creditworthy, and therefore granting to them PPP funds is of such sound value and so secured as reasonably to assure repayment. Clearly that's not true. *See e.g., Alaska Urological Inst., P.C.*, 619 B.R. at 709; *see also* Order and Oral Ruling at 27-29 ("This perfunctory SBA explanation is wholly conclusory and falls to anyone with even a passing familiarity with the bankruptcy process.").

Nevertheless, the SBA argues that it met its statutory obligations under 15 U.S.C. § 636(a)(6), in part,¹¹ by providing a bright-line rule excluding debtors currently in bankruptcy. SBA Reply at 12. This is nonsensical. The SBA's arguments regarding sound value are post hoc rationalizations for what amounts to nothing more than an oversight. "Significantly, [the Debtors were] not [] denied the opportunity to apply for PPP funds due to any analysis of [their] creditworthiness. *In re Skefos*, No. 19-29718-L, 2020 WL 2893413, at *13 (Bankr. W.D. Tenn. June 2, 2020). Not only is the bright-line rule is not based on any reality, but it is not correlated to an entity's ability to repay the PPP funds if not forgiven. For example, the Wall Street Journal recently estimated that about 300 companies that received approximately half a billion dollars in stimulus funds have failed. Shane Shifflett, *Hundreds of Companies That Got Stimulus Aid Have Failed: Recipients of PPP Loans Have Filed for Bankruptcy After the Money Ran Out*, WSJ (Updated November 17, 2020 at 9:45 a.m. ET).

The SBA portrays the Debtors' reliance on the SBA's statements in the Third Interim Final Rule regarding creditworthiness as misguided and taken out of context. *See* SBA's Reply at

¹¹ The SBA repeatedly states that "the SBA's statutory obligation to assure the 'sound value' of PPP loans" "satisfied, *in part*, by the bright-line bankruptcy exclusion." *See e.g.*, SBA Response/Reply Brief at 12 (emphasis added). This begs the question of how the SBA satisfied the *other* part of its statutory obligation to assure the "sound value" of PPP loans, whatever that *other* part may be.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

12 (referencing 85 Fed. Reg. 21,750, which states, “The Administrator recognizes that, unlike other SBA loan programs, the financial¹² terms for PPP Loans are uniform for all borrowers, and the standard underwriting process does not apply because no creditworthiness assessment is required for PPP Loans.”). However, it is difficult to imagine how “no creditworthiness assessment is required for PPP Loans” can mean anything other than there is “no creditworthiness assessment [] required for PPP Loans”—whether it is the SBA making the creditworthiness assessment or the PPP lender. Indeed, the SBA’s argument on this matter is circular and contradictory. Essentially, “[w]ith only the flimsiest of justifications [the SBA] took one of many underwriting criteria from its ‘normal’ loan programs (bankruptcy status of the borrower), changed it to an eligibility condition, and then applied it to an emergency grant program where it clearly had no place.” *In re Roman Catholic Church of Archdiocese of Santa Fe*, 615 B.R. 644, 657 (Bankr. D.N.M. 2020).

First, the SBA admits that the “SBA does not analyze PPP applications to determine whether the applicants are likely to liquidate or close or whether a particular applicant’s participation would be of ‘sound value’ prior to providing a loan number to a financial institution.” *See In re Penobscot Valley Hosp.*, Adv. No. 20-1005 (MAF) Stipulations for Trial at ¶ 39 [Docket No. 49] (Bankr. D. Me. May 26, 2020). Second, the SBA admits that the statement at issue here (*i.e.*, “no creditworthiness assessment is required for PPP Loans”) only applies to the PPP lender. *See* SBA’s Reply at 13 (“In other words, the question addresses what PPP lenders must consider in processing loans.”). Third, however, the SBA admits in the First Interim Rule that “for loans made under the PPP, SBA will not require the lenders to comply with section 120.150 ‘What are SBA’s lending criteria?’” First Interim Rule (emphasis added); *see also* 13

¹² Note: The SBA misquotes the Third Interim Final Rule, erroneously replacing the word “financial” with “financing”, which subtly changes the meaning of the SBA’s statement.

CFR § 120.150 (requiring that “The applicant (including an Operating Company) must be creditworthy. Loans must be so sound as to reasonably assure repayment. . . .”). Thus, by abrogating the PPP lender’s obligation to assess creditworthiness or sound value, and by affirming that the SBA itself does not make such assessment, one can only conclude that *no one* is responsible for assessing creditworthiness or ensuring sound value.

Moreover, the SBA admits that through the First Interim Rule, it adopted the eligibility requirements specifically delineated in the in 13 CFR § 120.110, as further described in the SBA’s Standard Operating Procedure 50-10, subpart B, Chapter 2: “be an operating business;” “be organized for profit;”¹³ “be located in the United States (including its territories and possessions);” “be small under SBA size requirements;” and “demonstrate the need for desired credit.” *See* SOP 50-10, pp. 91-104; *see also* First Interim Rule at III(2)(b) and -(c). The SOP-50-10 expressly states that the types of businesses *listed as ineligible* in 13 CFR § 120.110 are not eligible for an SBA loan. Importantly, bankruptcy debtors are not listed as ineligible businesses in 13 CFR § 120.110 and the SOP 50-10. *See* SOP 50-10, pp. 104-117. Furthermore, the SBA admits that “[u]nder the CARES Act, the eligibility determinations with respect to PPP applicants rests with the participating financial institution and not the SBA.” *In re Penobscot Valley Hosp.*, Stipulations for Trial at ¶ 38. Therefore, no bar on debtors in bankruptcy actually exists, no matter how the SBA now attempts to recharacterize the facts.

VI. Recent Legislation Provides Express Authority for SBA to Include Chapter 11 Debtors in PPP.

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021 (the “CAA”), which amended certain sections of the Bankruptcy Code. Most

¹³ The CARES Act has been extended to 501(c)(3) nonprofits.

importantly, Section 320 of Title III of the CAA expressly authorizes the SBA to include Chapter 11 debtors in possession in the PPP. A true and correct copy of the final version of the CAA, with relevant portions excerpted, is attached hereto as **Exhibit A**. Legislative history makes clear that numerous members of Congress requested that the SBA amend its rules to include debtors shortly after the PPP was first enacted. *See* Exhibit C attached to the *Verified Complaint* [Adv. Pro. Docket No. 1] (letters from Senators Susan Collins, Angus King, Patrick Leahy, and Bernard Sanders and Congressman Peter Welch, to the SBA). To date, however, the SBA has refused to amend its rules or otherwise act to allow debtors access to the PPP. At this point, the SBA has no sound reason to continue denying debtors generally, and the Debtors specifically, from the PPP, and denying the SBA's appeal here.

CONCLUSION

In conclusion, the Debtors ask this Court to dismiss this appeal as equitably moot or on the basis that the Bankruptcy Court did not abuse its discretion in granting the Debtors' request for preliminary injunction.

Dated: January 11, 2021

/s/ Samuel R. Maizel

JAMES L. DAY (WSBA #20474)
THOMAS A. BUFORD (WSBA #52969)
BUSH KORNFELD LLP

SAMUEL R. MAIZEL (*Admitted Pro Hac Vice*)
SAM J. ALBERTS (WSBA #22255)
GEOFFREY M. MILLER (*Admitted Pro Hac Vice*)
SARAH M. SCHRAG (*Admitted Pro Hac Vice*)
DENTONS US LLP

*Attorneys for the Chapter 11 Debtors and
Debtors In Possession*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Bankruptcy Procedure 8015(a)(7), the undersigned certifies that the *Reply Brief Of Appellees / Cross-Appellants* complies with the type- volume limitation and that the *Reply Brief Of Appellees / Cross-Appellants* contains 7,500 words (excluding the cover page, corporate disclosure statement, tables, signature blocks, required certificates) as counted by the computer program used to prepare the *Reply Brief Of Appellees / Cross-Appellants*.

Dated: January 11, 2021

/s/ Samuel R. Maizel

JAMES L. DAY (WSBA #20474)
THOMAS A. BUFORD (WSBA #52969)
BUSH KORNFELD LLP

SAMUEL R. MAIZEL (*Admitted Pro Hac Vice*)
SAM J. ALBERTS (WSBA #22255)
GEOFFREY M. MILLER (*Admitted Pro Hac Vice*)
SARAH M. SCHRAG (*Admitted Pro Hac Vice*)
DENTONS US LLP

*Attorneys for the Chapter 11 Debtors and
Debtors In Possession*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2021, I electronically filed the *Reply Brief Of Appellees / Cross-Appellants* with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

Dated: January 11, 2021

/s/ Samuel R. Maizel

JAMES L. DAY (WSBA #20474)
THOMAS A. BUFORD (WSBA #52969)
BUSH KORNFELD LLP

SAMUEL R. MAIZEL (*Admitted Pro Hac Vice*)
SAM J. ALBERTS (WSBA #22255)
GEOFFREY M. MILLER (*Admitted Pro Hac Vice*)
SARAH M. SCHRAG (*Admitted Pro Hac Vice*)
DENTONS US LLP

*Attorneys for the Chapter 11 Debtors and
Debtors In Possession*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Exhibit A
(Title III, Section 320 of the Consolidated Appropriations Act, 2021)

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

H. R. 133

One Hundred Sixteenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Friday,
the third day of January, two thousand and twenty*

An Act

Making consolidated appropriations for the fiscal year ending September 30, 2021,
providing coronavirus emergency response and relief, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consolidated Appropriations
Act, 2021”.

SEC. 2. TABLE OF CONTENTS.

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. References.
- Sec. 4. Explanatory statement.
- Sec. 5. Statement of appropriations.
- Sec. 6. Availability of funds.
- Sec. 7. Adjustments to compensation.
- Sec. 8. Definition.
- Sec. 9. Office of Management and Budget Reporting Requirement.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG
ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2021

- Title I—Agricultural Programs
- Title II—Farm Production and Conservation Programs
- Title III—Rural Development Programs
- Title IV—Domestic Food Programs
- Title V—Foreign Assistance and Related Programs
- Title VI—Related Agency and Food and Drug Administration
- Title VII—General Provisions

DIVISION B—COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS ACT, 2021

- Title I—Department of Commerce
- Title II—Department of Justice
- Title III—Science
- Title IV—Related Agencies
- Title V—General Provisions

DIVISION C—DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2021

- Title I—Military Personnel
- Title II—Operation and Maintenance
- Title III—Procurement
- Title IV—Research, Development, Test and Evaluation
- Title V—Revolving and Management Funds
- Title VI—Other Department of Defense Programs
- Title VII—Related Agencies
- Title VIII—General Provisions
- Title IX—Overseas Contingency Operations

H. R. 133—2

DIVISION D—ENERGY AND WATER DEVELOPMENT AND RELATED
AGENCIES APPROPRIATIONS ACT, 2021

Title I—Corps of Engineers—Civil
Title II—Department of the Interior
Title III—Department of Energy
Title IV—Independent Agencies
Title V—General Provisions

DIVISION E—FINANCIAL SERVICES AND GENERAL GOVERNMENT
APPROPRIATIONS ACT, 2021

Title I—Department of the Treasury
Title II—Executive Office of the President and Funds Appropriated to the President
Title III—The Judiciary
Title IV—District of Columbia
Title V—Independent Agencies
Title VI—General Provisions—This Act
Title VII—General Provisions—Government-wide
Title VIII—General Provisions—District of Columbia
Title IX—General Provision—Emergency Funding

DIVISION F—DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS
ACT, 2021

Title I—Departmental Management, Operations, Intelligence, and Oversight
Title II—Security, Enforcement, and Investigations
Title III—Protection, Preparedness, Response, and Recovery
Title IV—Research, Development, Training, and Services
Title V—General Provisions

DIVISION G—DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND
RELATED AGENCIES APPROPRIATIONS ACT, 2021

Title I—Department of the Interior
Title II—Environmental Protection Agency
Title III—Related Agencies
Title IV—General Provisions

DIVISION H—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES,
AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2021

Title I—Department of Labor
Title II—Department of Health and Human Services
Title III—Department of Education
Title IV—Related Agencies
Title V—General Provisions

DIVISION I—LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2021

Title I—Legislative Branch
Title II—General Provisions

DIVISION J—MILITARY CONSTRUCTION, VETERANS AFFAIRS, AND
RELATED AGENCIES APPROPRIATIONS ACT, 2021

Title I—Department of Defense
Title II—Department of Veterans Affairs
Title III—Related Agencies
Title IV—Overseas Contingency Operations
Title V—General Provisions

DIVISION K—DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND
RELATED PROGRAMS APPROPRIATIONS ACT, 2021

Title I—Department of State and Related Agency
Title II—United States Agency for International Development
Title III—Bilateral Economic Assistance
Title IV—International Security Assistance
Title V—Multilateral Assistance
Title VI—Export and Investment Assistance
Title VII—General Provisions
Title VIII—Nita M. Lowey Middle East Partnership for Peace Act of 2020
Title IX—Emergency Funding and Other Matters

DIVISION L—TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT,
AND RELATED AGENCIES APPROPRIATIONS ACT, 2021

Title I—Department of Transportation

H. R. 133—3

Title II—Department of Housing and Urban Development
Title III—Related Agencies
Title IV—General Provisions—This Act

DIVISION M—CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL
APPROPRIATIONS ACT, 2021

DIVISION N—ADDITIONAL CORONAVIRUS RESPONSE AND RELIEF

DIVISION O—EXTENSIONS AND TECHNICAL CORRECTIONS

Title I—Immigration Extensions
Title II—Commission on Black Men and Boys Corrections
Title III—U.S. Customs and Border Protection Authority to Accept Donations Extension
Title IV—Livestock Mandatory Reporting Extension
Title V—Soil Health and Income Protection Pilot Program Extension
Title VI—United States-Mexico-Canada Agreement Implementation Act Technical Corrections
Title VII—Deputy Architect of the Capitol Amendments
Title VIII—Pandemic Response Accountability Committee Amendments
Title IX—Adjustment of Status for Liberian Nationals Extension
Title X—Clean Up the Code Act of 2019
Title XI—Amendments to Provisions Relating to Child Care Centers
Title XII—Alaska Natives Extension
Title XIII— Open Technology Fund Opportunity to Contest Proposed Debarment
Title XIV—Budgetary Effects

DIVISION P—NATIONAL BIO AND AGRO-DEFENSE FACILITY ACT OF 2020

DIVISION Q—FINANCIAL SERVICES PROVISIONS AND INTELLECTUAL
PROPERTY

DIVISION R—PROTECTING OUR INFRASTRUCTURE OF PIPELINES AND
ENHANCING SAFETY ACT OF 2020

DIVISION S—INNOVATION FOR THE ENVIRONMENT

DIVISION T—SMITHSONIAN AMERICAN WOMEN’S HISTORY MUSEUM ACT
AND NATIONAL MUSEUM OF THE AMERICAN LATINO

DIVISION U—HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PROVISIONS

DIVISION V—AIRCRAFT CERTIFICATION, SAFETY, AND ACCOUNTABILITY

DIVISION W—INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2021

DIVISION X—SUPPORTING FOSTER YOUTH AND FAMILIES THROUGH THE
PANDEMIC

DIVISION Y—AMERICAN MINER BENEFITS IMPROVEMENT

DIVISION Z—ENERGY ACT OF 2020

DIVISION AA—WATER RESOURCES DEVELOPMENT ACT OF 2020

DIVISION BB—PRIVATE HEALTH INSURANCE AND PUBLIC HEALTH
PROVISIONS

DIVISION CC—HEALTH EXTENDERS

DIVISION DD—MONTANA WATER RIGHTS PROTECTION ACT

DIVISION EE—TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT OF
2020

DIVISION FF—OTHER MATTER

Title I—Continuing Education at Affected Foreign Institutions and Modification of
Certain Protections for Taxpayer Return Information
Title II—Public Lands
Title III—Foreign Relations and Department of State Provisions
Title IV—Senate Sergeant at Arms Cloud Services
Title V— Repeal of Requirement to Sell Certain Federal Property in Plum Island,
New York

H. R. 133—4

Title VI— Preventing Online Sales of E-Cigarettes to Children
 Title VII—FAFSA Simplification
 Title VIII—Access to Death Information Furnished to or Maintained by the Social Security Administration
 Title IX—Telecommunications and Consumer Protection
 Title X—Bankruptcy Relief
 Title XI—Western Water and Indian Affairs
 Title XII—Horseracing Integrity and Safety
 Title XIII—Community Development Block Grants
 Title XIV—COVID-19 Consumer Protection Act
 Title XV—American COMPETE Act
 Title XVI—Recording of Obligations
 Title XVII—Sudan Claims Resolution
 Title XVIII—Theodore Roosevelt Presidential Library Conveyance Act of 2020
 Title XIX—United States-Mexico Economic Partnership Act
 Title XX—Consumer Product Safety Commission Port Surveillance
 Title XXI—COVID-19 Regulatory Relief and Work From Home Safety Act

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to “this Act” contained in any division of this Act shall be treated as referring only to the provisions of that division.

SEC. 4. EXPLANATORY STATEMENT.

The explanatory statement regarding this Act, printed in the House section of the Congressional Record on or about December 21, 2020, and submitted by the Chairwoman of the Committee on Appropriations of the House, shall have the same effect with respect to the allocation of funds and implementation of divisions A through L of this Act as if it were a joint explanatory statement of a committee of conference.

SEC. 5. STATEMENT OF APPROPRIATIONS.

The following sums in this Act are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2021.

SEC. 6. AVAILABILITY OF FUNDS.

(a) Each amount designated in this Act by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

(b) Each amount designated in this Act by the Congress for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

SEC. 7. ADJUSTMENTS TO COMPENSATION.

Notwithstanding any other provision of law, no adjustment shall be made under section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 4501) (relating to cost of living adjustments for Members of Congress) during fiscal year 2021.

SEC. 8. DEFINITION.

In divisions A through M of this Act, the term “coronavirus” means SARS-CoV-2 or another coronavirus with pandemic potential.

H. R. 133—5

SEC. 9. OFFICE OF MANAGEMENT AND BUDGET REPORTING REQUIREMENT.

Notwithstanding the “7 calendar days” requirement in section 251(a)(7)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(a)(7)(B)), for any appropriations Act for fiscal year 2021 enacted before January 1, 2021, the Office of Management and Budget shall transmit to the Congress its report under that section estimating the discretionary budgetary effects of such Acts not later than January 15, 2021.

DIVISION A—AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2021

TITLE I

AGRICULTURAL PROGRAMS

PROCESSING, RESEARCH, AND MARKETING

OFFICE OF THE SECRETARY

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Office of the Secretary, \$46,998,000, of which not to exceed \$5,101,000 shall be available for the immediate Office of the Secretary; not to exceed \$1,324,000 shall be available for the Office of Homeland Security; not to exceed \$7,002,000 shall be available for the Office of Partnerships and Public Engagement, of which \$1,500,000 shall be for 7 U.S.C. 2279(c)(5); not to exceed \$22,321,000 shall be available for the Office of the Assistant Secretary for Administration, of which \$21,440,000 shall be available for Departmental Administration to provide for necessary expenses for management support services to offices of the Department and for general administration, security, repairs and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department: *Provided*, That funds made available by this Act to an agency in the Administration mission area for salaries and expenses are available to fund up to one administrative support staff for the Office; not to exceed \$3,908,000 shall be available for the Office of Assistant Secretary for Congressional Relations and Intergovernmental Affairs to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison within the executive branch; and not to exceed \$7,342,000 shall be available for the Office of Communications: *Provided further*, That the Secretary of Agriculture is authorized to transfer funds appropriated for any office of the Office of the Secretary to any other office of the Office of the Secretary: *Provided further*, That no appropriation for any office shall be increased or decreased by more than 5 percent: *Provided further*, That not to exceed \$22,000 of the amount made available under this paragraph for the immediate Office of the Secretary shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary: *Provided further*, That the amount made available under this heading for Departmental Administration shall be reimbursed from applicable

H. R. 133—812

for which credit is allowed under such section 7001 or 7003 (respectively).”.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Families First Coronavirus Response Act to which they relate.

TITLE III—CONTINUING THE PAYCHECK PROTECTION PROGRAM AND OTHER SMALL BUSINESS SUPPORT

SEC. 301. SHORT TITLE.

This title may be cited as the “Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act”.

SEC. 302. DEFINITIONS.

In this Act:

(1) ADMINISTRATION; ADMINISTRATOR.—The terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively.

(2) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632).

SEC. 303. EMERGENCY RULEMAKING AUTHORITY.

Not later than 10 days after the date of enactment of this Act, the Administrator shall issue regulations to carry out this Act and the amendments made by this Act without regard to the notice requirements under section 553(b) of title 5, United States Code.

SEC. 304. ADDITIONAL ELIGIBLE EXPENSES.

(a) ALLOWABLE USE OF PPP LOAN.—Section 7(a)(36)(F)(i) of the Small Business Act (15 U.S.C. 636(a)(36)(F)(i)) is amended—

(1) in subclause (VI), by striking “and” at the end;

(2) in subclause (VII), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(VIII) covered operations expenditures, as defined in section 7A(a);

“(IX) covered property damage costs, as defined in section 7A(a);

“(X) covered supplier costs, as defined in section 7A(a); and

“(XI) covered worker protection expenditures, as defined in section 7A(a).”.

(b) LOAN FORGIVENESS.—

(1) TRANSFER OF SECTION TO SMALL BUSINESS ACT.—

(A) IN GENERAL.—Section 1106 of the CARES Act (15 U.S.C. 9005) is redesignated as section 7A, transferred to the Small Business Act (15 U.S.C. 631 et seq.), and inserted so as to appear after section 7 of the Small Business Act (15 U.S.C. 636).

(B) CONFORMING AMENDMENTS TO TRANSFERRED SECTION.—Section 7A of the Small Business Act, as redesignated and transferred by subparagraph (A) of this paragraph, is amended—

H. R. 133—813

(i) in subsection (a)(1), by striking “under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102” and inserting “under section 7(a)(36)”; and

(ii) in subsection (c), by striking “of the Small Business Act (15 U.S.C. 636(a))” each place it appears.

(C) OTHER CONFORMING AMENDMENTS.—

(i) Section 1109(d)(2)(D) of the CARES Act (15 U.S.C. 9008(d)(2)(D)) is amended by striking “section 1106 of this Act” and inserting “section 7A of the Small Business Act”.

(ii) Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) is amended—

(I) in subparagraph (K), by striking “section 1106 of the CARES Act” and inserting “section 7A”; and

(II) in subparagraph (M)—

(aa) by striking “section 1106 of the CARES Act” each place it appears and inserting “section 7A”; and

(bb) in clause (v), by striking “section 1106(a) of the CARES Act” and inserting “section 7A(a)”.

(2) ADDITIONAL ELIGIBLE EXPENSES.—Section 7A of the Small Business Act, as redesignated and transferred by paragraph (1) of this subsection, is amended—

(A) in subsection (a)—

(i) by redesignating paragraphs (6), (7), and (8) as paragraphs (10), (11), and (12), respectively;

(ii) by redesignating paragraph (5) as paragraph (8);

(iii) by redesignating paragraph (4) as paragraph (6);

(iv) by redesignating paragraph (3) as paragraph (4);

(v) by inserting after paragraph (2) the following:

“(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;”;

(vi) by inserting after paragraph (4), as so redesignated, the following:

“(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;”;

(vii) by inserting after paragraph (6), as so redesignated, the following:

“(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—

H. R. 133—814

“(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;”;

(viii) by inserting after paragraph (8), as so redesignated, the following:

“(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;”;

(ix) in paragraph (11), as so redesignated—

H. R. 133—815

(I) in subparagraph (C), by striking “and” at the end;

(II) in subparagraph (D), by striking “and” at the end; and

(III) by adding at the end the following:

“(E) covered operations expenditures;

“(F) covered property damage costs;

“(G) covered supplier costs; and

“(H) covered worker protection expenditures; and”;

(B) in subsection (b), by adding at the end the following:

“(5) Any covered operations expenditure.

“(6) Any covered property damage cost.

“(7) Any covered supplier cost.

“(8) Any covered worker protection expenditure.”;

(C) in subsection (d)(8), by inserting “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,” after “rent obligation,”; and

(D) in subsection (e)—

(i) in paragraph (2)—

(I) by inserting “purchase orders, orders, invoices,” before “or other documents”; and

(II) by striking “covered lease obligations,” and inserting “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

(ii) in paragraph (3)(B), by inserting “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,” after “rent obligation,”.

(c) EFFECTIVE DATE; APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

(2) EXCLUSION OF LOANS ALREADY FORGIVEN.—The amendments made by subsections (a) and (b) shall not apply to a loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) for which the borrower received forgiveness before the date of enactment of this Act under section 1106 of the CARES Act, as in effect on the day before such date of enactment.

SEC. 305. HOLD HARMLESS.

(a) IN GENERAL.—Subsection (h) of section 7A of the Small Business Act, as redesignated and transferred by section 304 of this Act, is amended to read as follows:

“(h) HOLD HARMLESS.—

H. R. 133—816

“(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 7(a).

“(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 7(a) 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.”.

(b) EFFECTIVE DATE; APPLICABILITY.—The amendment made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

SEC. 306. SELECTION OF COVERED PERIOD FOR FORGIVENESS.

Section 7A of the Small Business Act, as redesignated and transferred by section 304 of this Act, is amended—

(A) by amending paragraph (4) of subsection (a), as so redesignated by section 304(b) of this Act, to read as follows:

“(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;”;

(1) by striking subsection (l).

H. R. 133—817

SEC. 307. SIMPLIFIED FORGIVENESS APPLICATION.

(a) IN GENERAL.—Section 7A of the Small Business Act, as redesignated and transferred by section 304 of this Act, and as amended by section 306 of this Act, is amended—

(1) in subsection (e), in the matter preceding paragraph (1), by striking “An eligible” and inserting “Except as provided in subsection (l), an eligible”;

(2) in subsection (f), by inserting “or the certification required under subsection (l), as applicable” after “subsection (e)”; and

(3) by adding at the end the following:

“(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 the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, 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 7(a)(36); 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

H. R. 133—818

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 the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, 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;

H. R. 133—819

“(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).”.

(b) **EFFECTIVE DATE; APPLICABILITY.**—The amendments made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

SEC. 308. SPECIFIC GROUP INSURANCE PAYMENTS AS PAYROLL COSTS.

(a) **IN GENERAL.**—Section 7(a)(36)(A)(viii)(I)(aa)(EE) of the Small Business Act (15 U.S.C. 636(a)(36)(A)(viii)(I)(aa)(EE)) is amended by inserting “or group life, disability, vision, or dental insurance” before “benefits”.

(b) **EFFECTIVE DATE; APPLICABILITY.**—The amendment made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

SEC. 309. DEMOGRAPHIC INFORMATION.

On and after the date of enactment of this Act, any loan origination application for a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended and added by this division, shall include a means by which the applicant for the loan may, at the discretion of the applicant, submit demographic information of the owner of the recipient of the loan, including the sex, race, ethnicity, and veteran status of the owner.

SEC. 310. CLARIFICATION OF AND ADDITIONAL LIMITATIONS ON ELIGIBILITY.

(a) **DATE IN OPERATION.**—

(1) **IN GENERAL.**—Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) is amended by adding at the end the following:

“(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.”.

(2) **EFFECTIVE DATE; APPLICABILITY.**—The amendment made by paragraph (1) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

(b) **EXCLUSION OF ENTITIES RECEIVING SHUTTERED VENUE OPERATOR GRANTS.**—Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)), as amended by subsection (a) of this section, is amended by adding at the end the following:

“(U) **EXCLUSION OF ENTITIES RECEIVING SHUTTERED VENUE OPERATOR GRANTS.**—An eligible person or entity (as defined under of section 24 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act)

H. R. 133—820

that receives a grant under such section 24 shall not be eligible for a loan under this paragraph.”.

SEC. 311. PAYCHECK PROTECTION PROGRAM SECOND DRAW LOANS.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following:

“(37) PAYCHECK PROTECTION PROGRAM SECOND DRAW LOANS.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the terms ‘eligible self-employed individual’, ‘housing cooperative’, ‘nonprofit organization’, ‘payroll costs’, ‘seasonal employer’, and ‘veterans organization’ have the meanings given those terms in paragraph (36), except that ‘eligible entity’ shall be substituted for ‘eligible recipient’ each place it appears in the definitions of those terms;

“(ii) the term ‘covered loan’ means a loan made under this paragraph;

“(iii) the terms ‘covered mortgage obligation’, ‘covered operating expenditure’, ‘covered property damage cost’, ‘covered rent obligation’, ‘covered supplier cost’, ‘covered utility payment’, and ‘covered worker protection expenditure’ have the meanings given those terms in section 7A(a);

“(iv) the term ‘eligible entity’—

“(I) means any business concern, nonprofit organization, housing cooperative, veterans organization, Tribal business concern, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative that—

“(aa) employs not more than 300 employees; and

“(bb)(AA) except as provided in subitems (BB), (CC), and (DD), had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter in 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the same quarter in 2019;

“(BB) if the entity was not in business during the first or second quarter of 2019, but was in business during the third and fourth quarter of 2019, had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the third or fourth quarter of 2019;

“(CC) if the entity was not in business during the first, second, or third quarter of 2019, but was in business during the fourth quarter of 2019, had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January

H. R. 133—821

1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the fourth quarter of 2019; or

“(DD) if the entity was not in business during 2019, but was in operation on February 15, 2020, had gross receipts during the second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the first quarter of 2020;

“(II) includes a business concern or organization made eligible for a loan under paragraph (36) under clause (iii)(II), (iv)(IV), or (vii) of subparagraph (D) of paragraph (36) and that meets the requirements described in items (aa) and (bb) of subclause (I); and

“(III) does not include—

“(aa) any entity that is a type of business concern (or would be, if such entity were a business concern) 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 subsection (a) or (k) of such section; or

“(bb) any business concern or entity primarily engaged in political or lobbying activities, which shall include any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents;

“(cc) any business concern or entity—

“(AA) for which an entity created in or organized under the laws of the People’s Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People’s Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership; or

“(BB) that retains, as a member of the board of directors of the business concern, a person who is a resident of the People’s Republic of China;

“(dd) any person required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 612); or

H. R. 133—822

“(ee) an eligible person or entity (as defined under section 24 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act) that receives a grant under such section 24; and

“(v) the term ‘Tribal business concern’ means a Tribal business concern described in section 31(b)(2)(C).

“(B) LOANS.—Except as otherwise provided in this paragraph, the Administrator may guarantee covered loans to eligible entities under the same terms, conditions, and processes as a loan made under paragraph (36).

“(C) MAXIMUM LOAN AMOUNT.—

“(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the maximum amount of a covered loan made to an eligible entity is the lesser of—

“(I) the product obtained by multiplying—

“(aa) at the election of the eligible entity, the average total monthly payment for payroll costs incurred or paid by the eligible entity during—

“(AA) the 1-year period before the date on which the loan is made; or

“(BB) calendar year 2019; by

“(bb) 2.5; or

“(II) \$2,000,000.

“(ii) SEASONAL EMPLOYERS.—The maximum amount of a covered loan made to an eligible entity that is a seasonal employer is the lesser of—

“(I) the product obtained by multiplying—

“(aa) at the election of the eligible entity, the average total monthly payments for payroll costs incurred or paid by the eligible entity for any 12-week period between February 15, 2019 and February 15, 2020; by

“(bb) 2.5; or

“(II) \$2,000,000.

“(iii) NEW ENTITIES.—The maximum amount of a covered loan made to an eligible entity that did not exist during the 1-year period preceding February 15, 2020 is the lesser of—

“(I) the product obtained by multiplying—

“(aa) the quotient obtained by dividing—

“(AA) the sum of the total monthly payments by the eligible entity for payroll costs paid or incurred by the eligible entity as of the date on which the eligible entity applies for the covered loan; by

“(BB) the number of months in which those payroll costs were paid or incurred; by

“(bb) 2.5; or

“(II) \$2,000,000.

“(iv) NAICS 72 ENTITIES.—The maximum amount of a covered loan made to an eligible entity that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursement is the lesser of—

H. R. 133—823

“(I) the product obtained by multiplying—

“(aa) at the election of the eligible entity, the average total monthly payment for payroll costs incurred or paid by the eligible entity during—

“(AA) the 1-year period before the date on which the loan is made; or

“(BB) calendar year 2019; by

“(bb) 3.5; or

“(II) \$2,000,000.

“(D) BUSINESS CONCERNS WITH MORE THAN 1 PHYSICAL LOCATION.—

“(i) IN GENERAL.—For a business concern with more than 1 physical location, the business concern shall be an eligible entity if the business concern would be eligible for a loan under paragraph (36) pursuant to clause (iii) of subparagraph (D) of such paragraph, as applied in accordance with clause (ii) of this subparagraph, and meets the revenue reduction requirements described in item (bb) of subparagraph (A)(iv)(I).

“(ii) SIZE LIMIT.—For purposes of applying clause (i), the Administrator shall substitute ‘not more than 300 employees’ for ‘not more than 500 employees’ in paragraph (36)(D)(iii).

“(E) WAIVER OF AFFILIATION RULES.—

“(i) IN GENERAL.—The waiver described in paragraph (36)(D)(iv) shall apply for purposes of determining eligibility under this paragraph.

“(ii) SIZE LIMIT.—For purposes of applying clause (i), the Administrator shall substitute ‘not more than 300 employees’ for ‘not more than 500 employees’ in subclause (I) and (IV) of paragraph (36)(D)(iv).

“(F) LOAN NUMBER LIMITATION.—An eligible entity may only receive 1 covered loan.

“(G) EXCEPTION FROM CERTAIN CERTIFICATION REQUIREMENTS.—An eligible entity applying for a covered loan shall not be required to make the certification described in clause (iii) or (iv) of paragraph (36)(G).

“(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) GROSS RECEIPTS AND SIMPLIFIED CERTIFICATION OF REVENUE TEST.—

“(i) LOANS OF UP TO \$150,000.—For a covered loan of not more than \$150,000, the eligible entity—

“(I) may submit a certification attesting that the eligible entity meets the applicable revenue loss requirement under subparagraph (A)(iv)(I)(bb); and

“(II) if the eligible entity submits a certification under subclause (I), shall, on or before the date on which the eligible entity submits an

H. R. 133—824

application for forgiveness under subparagraph (J), produce adequate documentation that the eligible entity met such revenue loss standard.

“(ii) FOR NONPROFIT AND VETERANS ORGANIZATIONS.—For purposes of calculating gross receipts under subparagraph (A)(iv)(I)(bb) for an eligible entity that is a nonprofit organization, a veterans organization, or an organization described in subparagraph (A)(iv)(II), gross receipts means gross receipts within the meaning of section 6033 of the Internal Revenue Code of 1986.

“(J) LOAN FORGIVENESS.—

“(i) DEFINITION OF COVERED PERIOD.—In this subparagraph, the term ‘covered period’ has the meaning given that term in section 7A(a).

“(ii) FORGIVENESS GENERALLY.—Except as otherwise provided in this subparagraph, an eligible entity shall be eligible for forgiveness of indebtedness on a covered loan in the same manner as an eligible recipient with respect to a loan made under paragraph (36) of this section, as described in section 7A.

“(iii) FORGIVENESS AMOUNT.—An eligible entity shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred or expenditures made during the covered period:

“(I) Payroll costs, excluding any payroll costs that are—

“(aa) qualified wages, as defined in subsection (c)(3) of section 2301 of the CARES Act (26 U.S.C. 3111 note), taken into account in determining the credit allowed under such section; or

“(bb) 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.

“(II) 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).

“(III) Any covered operations expenditure.

“(IV) Any covered property damage cost.

“(V) Any payment on any covered rent obligation.

“(VI) Any covered utility payment.

“(VII) Any covered supplier cost.

“(VIII) Any covered worker protection expenditure.

“(iv) LIMITATION ON FORGIVENESS FOR ALL ELIGIBLE ENTITIES.—Subject to any reductions under section 7A(d), the forgiveness amount under this subparagraph shall be equal to the lesser of—

“(I) the amount described in clause (ii); and

“(II) the amount equal to the quotient obtained by dividing—

H. R. 133—825

“(aa) the amount of the covered loan used for payroll costs during the covered period; and

“(bb) 0.60.

“(v) SUBMISSION OF MATERIALS FOR FORGIVENESS.—For purposes of applying subsection (l)(1) of section 7A to a covered loan of not more than \$150,000 under this paragraph, an eligible entity may be required to provide, at the time of the application for forgiveness, documentation required to substantiate revenue loss in accordance with subparagraph (I).

“(K) LENDER ELIGIBILITY.—Except as otherwise provided in this paragraph, a lender approved to make loans under paragraph (36) may make covered loans under the same terms and conditions as in paragraph (36).

“(L) REIMBURSEMENT FOR LOAN PROCESSING AND SERVICING.—The Administrator shall reimburse a lender authorized to make a covered loan—

“(i) for a covered loan of not more than \$50,000, in an amount equal to the lesser of—

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

“(II) \$2,500;

“(ii) at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

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

“(II) 3 percent for a covered loan of more than \$350,000.

“(M) PUBLICATION OF GUIDANCE.—Not later than 10 days after the date of enactment of this paragraph, the Administrator shall issue guidance addressing barriers to accessing capital for minority, underserved, veteran, and women-owned business concerns for the purpose of ensuring equitable access to covered loans.

“(N) STANDARD OPERATING PROCEDURE.—The Administrator shall, to the maximum extent practicable, allow a lender approved to make covered loans to use existing program guidance and standard operating procedures for loans made under this subsection.

“(O) SUPPLEMENTAL COVERED LOANS.—A covered loan under this paragraph may only be made to an eligible entity that—

“(i) has received a loan under paragraph (36); and

“(ii) on or before the expected date on which the covered loan under this paragraph is disbursed to the eligible entity, has used, or will use, the full amount of the loan received under paragraph (36).”.

(b) APPLICATION OF EXEMPTION BASED ON EMPLOYEE AVAILABILITY.—

(1) IN GENERAL.—Section 7A(d) of the Small Business Act, as redesignated and transferred by section 304 of this Act, is amended—

(A) in paragraph (5)(B), by inserting “(or, with respect to a covered loan made on or after the date of enactment

H. R. 133—826

of the Economic Aid to Hard-Hit Small Businesses, Non-profits, and Venues Act, not later than the last day of the covered period with respect to such covered loan)” after “December 31, 2020” each place it appears; and

(B) in paragraph (7)—

(i) by inserting “(or, with respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Non-profits, and Venues Act, ending on the last day of the covered period with respect to such covered loan)” after “December 31, 2020” the first and third places it appears; and

(ii) by inserting “(or, with respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Non-profits, and Venues Act, on or before the last day of the covered period with respect to such covered loan)” after “December 31, 2020” the second place it appears.

(2) MODIFICATION OF DATES.—The Administrator and the Secretary of the Treasury may jointly, by regulation, modify any date in section 7A(d) of the Small Business Act, as redesignated and transferred by section 304 of this Act, other than a deadline established under an amendment made by paragraph (1), in a manner consistent with the purposes of the Paycheck Protection Program to help businesses retain workers and meet financial obligations.

(c) ELIGIBLE CHURCHES AND RELIGIOUS ORGANIZATIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the interim final rule of the Administration entitled “Business Loan Program Temporary Changes; Paycheck Protection Program” (85 Fed. Reg. 20817 (April 15, 2020)) properly clarified the eligibility of churches and religious organizations for loans made under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(2) APPLICABILITY OF PROHIBITION.—The prohibition on eligibility established by section 120.110(k) of title 13, Code of Federal Regulations, or any successor regulation, shall not apply to a loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

SEC. 312. INCREASED ABILITY FOR PAYCHECK PROTECTION PROGRAM BORROWERS TO REQUEST AN INCREASE IN LOAN AMOUNT DUE TO UPDATED REGULATIONS.

(a) DEFINITIONS.—In this section—

(1) the terms “covered loan” and “eligible recipient” have the meanings given those terms in 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)); and

(2) the term “included covered loan” means a covered loan for which, as of the date of enactment of this Act, the borrower had not received forgiveness under section 1106 of the CARES Act, as in effect on the day before such date of enactment.

(b) RULES OR GUIDANCE.—Not later than 17 days after the date of enactment of this Act, and without regard to the notice requirements under section 553(b) of title 5, United States Code, the Administrator shall issue rules or guidance to ensure that an eligible recipient of an included covered loan that returns

H. R. 133—827

amounts disbursed under the included covered loan or does not accept the full amount of the included covered loan for which the eligible recipient was approved—

(1) in the case of an eligible recipient that returned all or part of an included covered loan, the eligible recipient may reapply for a covered loan for an amount equal to the difference between the amount retained and the maximum amount applicable; and

(2) in the case of an eligible recipient that did not accept the full amount of an included covered loan, the eligible recipient may request a modification to increase the amount of the covered loan to the maximum amount applicable, subject to the requirements of section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

(c) INTERIM FINAL RULES.—Notwithstanding the interim final rule issued by the Administration entitled “Business Loan Program Temporary Changes; Paycheck Protection Program—Loan Increases” (85 Fed. Reg. 29842 (May 19, 2020)), an eligible recipient of an included covered loan that is eligible for an increased covered loan amount as a result of any interim final rule that allows for covered loan increases may submit a request for an increase in the included covered loan amount even if—

(1) the initial covered loan amount has been fully disbursed;

or

(2) the lender of the initial covered loan has submitted to the Administration a Form 1502 report related to the covered loan.

SEC. 313. CALCULATION OF MAXIMUM LOAN AMOUNT FOR FARMERS AND RANCHERS UNDER THE PAYCHECK PROTECTION PROGRAM.

(a) IN GENERAL.—Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)), as amended by section 310 of this Act, is amended—

(1) in subparagraph (E), in the matter preceding clause (i), by striking “During” and inserting “Except as provided in subparagraph (V), during”; and

(2) by adding at the end the following:

“(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

H. R. 133—828

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 the date of enactment of this subparagraph 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.”.

(b) EFFECTIVE DATE; APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

(2) EXCLUSION OF LOANS ALREADY FORGIVEN.—The amendments made by subsection (a) shall not apply to a loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) for which the borrower received forgiveness before the date of enactment of this Act under section 1106 of the CARES Act, as in effect on the day before such date of enactment.

SEC. 314. FARM CREDIT SYSTEM INSTITUTIONS.

(a) DEFINITION OF FARM CREDIT SYSTEM INSTITUTION.—In this section, the term “Farm Credit System institution”—

(1) means an institution of the Farm Credit System chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); and

(2) does not include the Federal Agricultural Mortgage Corporation.

H. R. 133—829

(b) FACILITATION OF PARTICIPATION IN PPP AND SECOND DRAW LOANS.—

(1) APPLICABLE RULES.—Solely with respect to loans under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), Farm Credit Administration regulations and guidance issued as of July 14, 2020, and compliance with such regulations and guidance, shall be deemed functionally equivalent to requirements referenced in section 3(a)(iii)(II) of the interim final rule of the Administration entitled “Business Loan Program Temporary Changes; Paycheck Protection Program” (85 Fed. Reg. 20811 (April 15, 2020)) or any similar requirement referenced in that interim final rule in implementing such paragraph (37).

(2) APPLICABILITY OF CERTAIN LOAN REQUIREMENTS.—For purposes of making loans under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or forgiving those loans in accordance with section 7A of the Small Business Act, as redesignated and transferred by section 304 of this Act, and subparagraph (J) of such paragraph (37), sections 4.13, 4.14, and 4.14A of the Farm Credit Act of 1971 (12 U.S.C. 2199, 2202, 2202a) (including regulations issued under those sections) shall not apply.

(3) RISK WEIGHT.—

(A) IN GENERAL.—With respect to the application of Farm Credit Administration capital requirements, a loan described in subparagraph (B)—

- (i) shall receive a risk weight of zero percent; and
- (ii) shall not be included in the calculation of any applicable leverage ratio or other applicable capital ratio or calculation.

(B) LOANS DESCRIBED.—A loan referred to in subparagraph (A) is—

(i) a loan made by a Farm Credit Bank described in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)) to a Federal Land Bank Association, a Production Credit Association, or an agricultural credit association described in that section to make loans under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or forgive those loans in accordance with section 7A of the Small Business Act, as redesignated and transferred by section 304 of this Act, and subparagraph (J) of such paragraph (37); or

(ii) a loan made by a Federal Land Bank Association, a Production Credit Association, an agricultural credit association, or the bank for cooperatives described in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)) under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(c) EFFECTIVE DATE; APPLICABILITY.—This section shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

H. R. 133—830

SEC. 315. DEFINITION OF SEASONAL EMPLOYER.

(a) PPP LOANS.—Section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)) is amended—

- (1) in clause (xi), by striking “and” at the end;
- (2) in clause (xii), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:

“(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;”.

(b) LOAN FORGIVENESS.—Paragraph (12) of section 7A(a) of the Small Business Act, as so redesignated and transferred by section 304 of this Act, is amended to read as follows:

“(12) the terms ‘payroll costs’ and ‘seasonal employer’ have the meanings given those terms in section 7(a)(36).”.

(c) EFFECTIVE DATE; APPLICABILITY.—The amendments made by subsections (a) and (b) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

SEC. 316. HOUSING COOPERATIVES.

Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) is amended—

- (1) in subparagraph (A), as amended by section 315(a) of this Act, by adding at the end the following:

“(xiv) the term ‘housing cooperative’ means a cooperative housing corporation (as defined in section 216(b) of the Internal Revenue Code of 1986) that employs not more than 300 employees;” and

- (2) in subparagraph (D)—

(A) in clause (i), by inserting “housing cooperative,” before “veterans organization,” each place it appears; and

(B) in clause (vi), by inserting “, a housing cooperative,” before “a veterans organization”.

SEC. 317. ELIGIBILITY OF NEWS ORGANIZATIONS FOR LOANS UNDER THE PAYCHECK PROTECTION PROGRAM.

(a) ELIGIBILITY OF INDIVIDUAL STATIONS, NEWSPAPERS, AND PUBLIC BROADCASTING ORGANIZATIONS.—Section 7(a)(36)(D)(iii) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iii)) is amended—

- (1) by striking “During the covered period” and inserting the following:

“(I) IN GENERAL.—During the covered period”;

and

- (2) by adding at the end the following

“(II) ELIGIBILITY OF NEWS ORGANIZATIONS.—

“(aa) DEFINITION.—In this subclause, the term ‘included business concern’ means a business concern, including any station which

H. R. 133—831

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 the Internal Revenue Code of 1986 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.”.

(b) ELIGIBILITY OF AFFILIATED ENTITIES.—Section 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv)) is amended—

(1) in subclause (II), by striking “and” at the end;

(2) in subclause (III), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(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

H. R. 133—832

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.”.

(c) APPLICATION OF PROHIBITION ON PUBLICLY TRADED COMPANIES.—Clause (viii) of section 7(a)(36)(D) of the Small Business Act (15 U.S.C. 636(a)(36)(D), as added by section 342 of this Act is amended—

(1) by striking “Notwithstanding” and inserting the following:

“(I) IN GENERAL.—Subject to subclause (II), and notwithstanding”; and

(2) by adding at the end—

“(II) RULE FOR AFFILIATED ENTITIES.—With respect to a business concern made eligible by clause (iii)(II) or clause (iv)(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, is an issuer.”.

SEC. 318. ELIGIBILITY OF 501(c)(6) AND DESTINATION MARKETING ORGANIZATIONS FOR LOANS UNDER THE PAYCHECK PROTECTION PROGRAM.

Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) is amended—

(1) in subparagraph (A), as amended by section 316 of this Act, by adding at the end the following:

“(xv) the term ‘destination marketing organization’ means a nonprofit entity that is—

“(I) an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; 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

H. R. 133—833

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

(2) in subparagraph (D), as amended by section 316 of this Act—

(A) in clause (v), by inserting “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 clause (iii)(II), (iv)(IV), or (vii),” after “clause (i)(I),”;

(B) in clause (vi), by inserting “a business concern or organization made eligible for a loan under this paragraph under clause (vii),” after “a nonprofit organization,”; and

(C) by adding at the end the following:

“(vii) ELIGIBILITY FOR CERTAIN 501(c)(6) ORGANIZATIONS.—

“(I) IN GENERAL.—Any organization that is described in section 501(c)(6) of the Internal Revenue Code and that is exempt from taxation under section 501(a) of such Code (excluding professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity) shall be eligible to receive a 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

“(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

H. R. 133—834

“(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 the Internal Revenue Code and is exempt from taxation under section 501(a) of such Code; or

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

SEC. 319. PROHIBITION ON USE OF LOAN PROCEEDS FOR LOBBYING ACTIVITIES.

Section 7(a)(36)(F) of the Small Business Act (15 U.S.C. 636(a)(36)(F)) is amended by adding at the end the following:

“(vi) PROHIBITION.—None of the proceeds of a covered loan may be used for—

“(I) lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602);

“(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.”.

SEC. 320. BANKRUPTCY PROVISIONS.

(a) IN GENERAL.—Section 364 of title 11, United States Code, is amended by adding at the end the following:

“(g)(1) The court, after notice and a hearing, may authorize a debtor in possession or a trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of this title to obtain a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), and such loan shall be treated as a debt to the extent the loan is not forgiven in accordance with section 7A of the Small Business Act or subparagraph (J) of such paragraph (37), as applicable, with priority equal to a claim of the kind specified in subsection (c)(1) of this section.

“(2) The trustee may incur debt described in paragraph (1) notwithstanding any provision in a contract, prior order authorizing the trustee to incur debt under this section, prior order authorizing the trustee to use cash collateral under section 363, or applicable law that prohibits the debtor from incurring additional debt.

“(3) The court shall hold a hearing within 7 days after the filing and service of the motion to obtain a loan described in paragraph (1). Notwithstanding the Federal Rules of Bankruptcy Procedure, at such hearing, the court may grant relief on a final basis.”.

(b) ALLOWANCE OF ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (8)(B), by striking “and” at the end;

H. R. 133—835

(2) in paragraph (9), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(10) any debt incurred under section 364(g)(1) of this title.”.

(c) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1191 of title 11, United States Code, is amended by adding at the end the following:

“(f) SPECIAL PROVISION RELATED TO COVID-19 PANDEMIC.—Notwithstanding section 1129(a)(9)(A) of this title and subsection (e) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed under subsection (b) of this section if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.”.

(d) CONFIRMATION OF PLAN FOR FAMILY FARMERS AND FISHERMEN.—Section 1225 of title 11, United States Code, is amended by adding at the end the following:

“(d) Notwithstanding section 1222(a)(2) of this title and subsection (b)(1) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.”.

(e) CONFIRMATION OF PLAN FOR INDIVIDUALS.—Section 1325 of title 11, United States Code, is amended by adding at the end the following:

“(d) Notwithstanding section 1322(a)(2) of this title and subsection (b)(1) of this section, a plan that provides for payment of a claim of a kind specified in section 503(b)(10) of this title may be confirmed if the plan proposes to make payments on account of such claim when due under the terms of the loan giving rise to such claim.”.

(f) EFFECTIVE DATE; SUNSET.—

(1) EFFECTIVE DATE.—The amendments made by subsections (a) through (e) shall—

(A) take effect on the date on which the Administrator submits to the Director of the Executive Office for United States Trustees a written determination that, subject to satisfying any other eligibility requirements, any debtor in possession or trustee that is authorized to operate the business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title 11, United States Code, would be eligible for a loan under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)); and

(B) apply to any case pending on or commenced on or after the date described in subparagraph (A).

(2) SUNSET.—

(A) IN GENERAL.—If the amendments made by subsections (a) through (e) take effect under paragraph (1), effective on the date that is 2 years after the date of enactment of this Act—

(i) section 364 of title 11, United States Code, is amended by striking subsection (g);

(ii) section 503(b) of title 11, United States Code, is amended—

H. R. 133—836

(I) in paragraph (8)(B), by adding “and” at the end;

(II) in paragraph (9), by striking “; and” at the end and inserting a period; and

(III) by striking paragraph (10);

(iii) section 1191 of title 11, United States Code, is amended by striking subsection (f);

(iv) section 1225 of title 11, United States Code, is amended by striking subsection (d); and

(v) section 1325 of title 11, United States Code, is amended by striking subsection (d).

(B) APPLICABILITY.—Notwithstanding the amendments made by subparagraph (A) of this paragraph, if the amendments made by subsections (a) through (e) take effect under paragraph (1) of this subsection, such amendments shall apply to any case under title 11, United States Code, commenced before the date that is 2 years after the date of enactment of this Act.

SEC. 321. OVERSIGHT.

(a) COMPLIANCE WITH OVERSIGHT REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), on and after the date of enactment of this Act, the Administrator shall comply with any data or information requests or inquiries made by the Comptroller General of the United States not later than 15 days (or such later date as the Comptroller General may specify) after receiving the request or inquiry.

(2) EXCEPTION.—If the Administrator is unable to comply with a request or inquiry described in paragraph (1) before the applicable date described in that paragraph, the Administrator shall, before such applicable date, submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a notification that includes a detailed justification for the inability of the Administrator to comply with the request or inquiry.

(b) TESTIMONY.—Not later than the date that is 120 days after the date of enactment of this Act, and not less than twice each year thereafter until the date that is 2 years after the date of enactment of this Act, the Administrator and the Secretary of the Treasury shall testify before the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding implementation of this Act and the amendments made by this Act.

SEC. 322. CONFLICTS OF INTEREST.

(a) DEFINITIONS.—In this section:

(1) CONTROLLING INTEREST.—The term “controlling interest” means owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity.

(2) COVERED ENTITY.—

(A) DEFINITION.—The term “covered entity” means an entity in which a covered individual directly or indirectly holds a controlling interest.

(B) TREATMENT OF SECURITIES.—For the purpose of determining whether an entity is a covered entity, the

H. R. 133—837

securities owned, controlled, or held by 2 or more individuals who are related as described in paragraph (3)(B) shall be aggregated.

(3) COVERED INDIVIDUAL.—The term “covered individual” means—

(A) the President, the Vice President, the head of an Executive department, or a Member of Congress; and

(B) the spouse, as determined under applicable common law, of an individual described in subparagraph (A).

(4) EXECUTIVE DEPARTMENT.—The term “Executive department” has the meaning given the term in section 101 of title 5, United States Code.

(5) MEMBER OF CONGRESS.—The term “Member of Congress” means a Member of the Senate or House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(6) EQUITY INTEREST.—The term “equity interest” means—

(A) a share in an entity, without regard to whether the share is—

(i) transferable; or

(ii) classified as stock or anything similar;

(B) a capital or profit interest in a limited liability company or partnership; or

(C) a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in subparagraph (A) or (B), respectively.

(b) REQUIREMENT FOR DISCLOSURE REGARDING EXISTING LOANS.—For any loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) made to a covered entity before the date of enactment of this Act—

(1) if, before the date of enactment of this Act, the covered entity submitted an application for forgiveness under section 1106 of the CARES Act (15 U.S.C. 9005) (as such section was in effect on the day before the date of enactment of this Act) with respect to such loan, not later than 30 days after the date of enactment of this Act, the principal executive officer, or individual performing a similar function, of the covered entity shall disclose to the Administrator that the entity is a covered entity; and

(2) if, on or after the date of enactment of this Act, the covered entity submits an application for forgiveness under section 7A of the Small Business Act, as redesignated and transferred by section 304 of this Act, with respect to such loan, not later than 30 days after submitting the application, the principal executive officer, or individual performing a similar function, of the covered entity shall disclose to the Administrator that the entity is a covered entity.

(c) BAN ON NEW LOANS.—On and after the date of enactment of this Act, a loan under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added and amended by this Act, may not be made to a covered entity.

SEC. 323. COMMITMENT AUTHORITY AND APPROPRIATIONS.

(a) COMMITMENT AUTHORITY.—Section 1102(b) of the CARES Act (Public Law 116–136) is amended—

(1) in paragraph (1)—

H. R. 133—838

(A) in the paragraph heading, by inserting “AND SECOND DRAW” after “PPP”;

(B) by striking “August 8, 2020” and inserting “March 31, 2021”;

(C) by striking “paragraph (36)” and inserting “paragraphs (36) and (37)”; and

(D) by striking “\$659,000,000,000” and inserting “\$806,450,000,000”; and

(2) by adding at the end the following:

“(3) 2021 7(a) LOAN PROGRAM LEVEL AND FUNDING.—Notwithstanding the amount authorized under the heading ‘Small Business Administration—Business Loans Program Account’ under the Financial Services and General Government Appropriations Act, 2021 for commitments for general business loans authorized under paragraphs (1) through (35) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), commitments for general business loans authorized under paragraphs (1) through (35) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) shall not exceed \$75,000,000,000 for a combination of amortizing term loans and the aggregated maximum line of credit provided by revolving loans during the period beginning on the date of enactment of this Act and ending on September 30, 2021.”.

(b) CLARIFICATION OF SECONDARY MARKET CAP.—Section 1107(b) of the CARES Act (15 U.S.C. 9006(b)) is amended by inserting “with respect to loans under any paragraph of section 7(a) of the Small Business Act (15 U.S.C. 636(a))” before “shall not exceed”.

(c) RESCISSION.—With respect to unobligated balances under the heading “Small Business Administration—Business Loans Program Account, CARES Act” as of the day before the date of enactment of this Act, \$146,500,000,000 shall be rescinded and deposited into the general fund of the Treasury.

(d) DIRECT APPROPRIATIONS.—

(1) NEW DIRECT APPROPRIATIONS FOR PPP LOANS, SECOND DRAW LOANS, AND THE MBDA.—There is appropriated, out of amounts in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2021, to remain available until expended, for additional amounts—

(A) \$284,450,000,000 under the heading “Small Business Administration—Business Loans Program Account, CARES Act”, for the cost of guaranteed loans as authorized under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended and added by this Act, including the cost of any modifications to any loans guaranteed under such paragraph (36) that were approved on or before August 8, 2020, of which—

(i) not less than \$15,000,000,000 shall be for guaranteeing loans under such paragraph (36) or (37) made by community financial institutions, as defined in section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A));

(ii) not less than \$15,000,000,000 shall be for guaranteeing loans under such paragraph (36) or (37) made by—

(I) insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act

H. R. 133—839

(12 U.S.C. 1813)) with consolidated assets of less than \$10,000,000,000;

(II) credit unions (as defined in section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A))) with consolidated assets of less than \$10,000,000,000; or

(III) institutions of the Farm Credit System chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) with consolidated assets of less than \$10,000,000,000 (not including the Federal Agricultural Mortgage Corporation);

(iii) not less than \$15,000,000,000 shall be for guaranteeing loans under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended by this Act, that are—

(I) made to eligible recipients with not more than 10 employees; or

(II) in an amount that is not more than \$250,000 and made to an eligible recipient that is located in a neighborhood that is a low-income neighborhood or a moderate-income neighborhood, for the purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.);

(iv) not less than \$35,000,000,000 shall be for guaranteeing loans under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended by this Act, to eligible recipients that have not previously received a loan under such paragraph (36); and

(v) not less than \$25,000,000,000 shall be for guaranteeing loans under paragraph (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by this Act, that are—

(I) made to eligible entities with not more than 10 employees; or

(II) in an amount that is not more than \$250,000 and made to an eligible entity that is located in a neighborhood that is a low-income neighborhood or a moderate-income neighborhood, for the purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.);

(B) \$25,000,000 under the heading “Department of Commerce—Minority Business Development Agency” for the Minority Business Development Centers Program, including Specialty Centers, for necessary expenses, including any cost sharing requirements that may exist, for assisting minority business enterprises to prevent, prepare for, and respond to coronavirus, including identifying and accessing local, State, and Federal government assistance related to such virus;

(C) \$50,000,000 under the heading “Small Business Administration—Salaries and Expenses” for the cost of carrying out reviews and audits of loans under subsection (l) of section 7A of the Small Business Act, as redesignated, transferred, and amended by this Act;

H. R. 133—840

(D) \$20,000,000,000 under the heading “Small Business Administration—Targeted EIDL Advance” to carry out section 331 of this Act, of which \$20,000,000 shall be made available to the Inspector General of the Small Business Administration to prevent waste, fraud, and abuse with respect to funding made available under that section;

(E) \$57,000,000 for the program established under section 7(m) of the Small Business Act (15 U.S.C. 636(m)) of which—

(i) \$50,000,000 shall be to provide technical assistance grants under such section 7(m) under the heading “Small Business Administration—Entrepreneurial Development Programs”; and

(ii) \$7,000,000 shall be to provide direct loans under such section 7(m) under the heading “Small Business Administration—Business Loans Program Account”;

(F) \$1,918,000,000 under the heading “Small Business Administration—Business Loans Program Account” for the cost of guaranteed loans as authorized by paragraphs (1) through (35) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), including the cost of carrying out sections 326, 327, and 328 of this Act;

(G) \$3,500,000,000 under the heading “Small Business Administration—Business Loans Program Account, CARES Act” for carrying out section 325 of this Act; and

(H) \$15,000,000,000 under the heading “Small Business Administration—Shuttered Venue Operators” to carry out section 324 of this Act.

(2) MODIFICATION OF SET-ASIDES.—

(A) IN GENERAL.—Notwithstanding paragraph (1)(A), if the Administrator makes the determination described in subparagraph (B) of this paragraph, the Administrator may reduce the amount of any allocation under paragraph (1)(A) to be such amount as the Administrator may determine necessary.

(B) REQUIREMENTS FOR DETERMINATION.—The determination described in this subparagraph is a determination by the Administrator that—

(i) is not made earlier than 25 days after the date of enactment of this Act;

(ii) it is not reasonably expected that a type of entity described in paragraph (1)(A) will make, or receive, as applicable, the minimum amount of loans necessary to meet the applicable allocation under paragraph (1)(A); and

(iii) it is reasonably expected that the total amount of loans guaranteed under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended and added by this Act, will equal substantially all of the amount permitted by available funds by March 31, 2021.

(3) APPROPRIATIONS FOR THE OFFICE OF INSPECTOR GENERAL.—

(A) IN GENERAL.—Effective on the date of enactment of this Act, the remaining unobligated balances of funds

H. R. 133—841

from amounts made available for “Small Business Administration—Office of Inspector General” under section 1107(a)(3) of the CARES Act (15 U.S.C. 9006(a)(3)), are hereby rescinded.

(B) FUNDING.—

(i) IN GENERAL.—There is appropriated, for an additional amount, for the fiscal year ending September 30, 2021, out of amounts in the Treasury not otherwise appropriated, an amount equal to the amount rescinded under subparagraph (A), to remain available until expended, under the heading “Small Business Administration—Office of Inspector General”.

(ii) USE OF FUNDS.—The amounts made available under clause (i) shall be available for the same purposes, in addition to other funds as may be available for such purposes, and under the same authorities as the amounts made available under section 1107(a)(3) of the CARES Act (15 U.S.C. 9006(a)(3)).

SEC. 324. GRANTS FOR SHUTTERED VENUE OPERATORS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE PERSON OR ENTITY.—

(A) IN GENERAL.—The term “eligible person or entity” means a live venue operator or promoter, theatrical producer, or live performing arts organization operator, a relevant museum operator, a motion picture theatre operator, or a talent representative that meets the following requirements:

(i) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative—

(I) was fully operational as a live venue operator or promoter, theatrical producer, or live performing arts organization operator, a relevant museum operator, a motion picture theatre operator, or a talent representative on February 29, 2020; and

(II) has gross earned revenue during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter in 2020 that demonstrates not less than a 25 percent reduction from the gross earned revenue of the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative during the same quarter in 2019.

(ii) As of the date of the grant under this section—

(I) the live venue operator or promoter, theatrical producer, or live performing arts organization operator is or intends to resume organizing, promoting, producing, managing, or hosting future live events described in paragraph (3)(A)(i);

(II) the motion picture theatre operator is open or intends to reopen for the primary purpose of public exhibition of motion pictures;

H. R. 133—842

- (III) the relevant museum operator is open or intends to reopen; or
- (IV) the talent representative is representing or managing artists and entertainers.
- (iii) The venues at which the live venue operator or promoter, theatrical producer, or live performing arts organization operator promotes, produces, manages, or hosts events described in paragraph (3)(A)(i) or the artists and entertainers represented or managed by the talent representative perform have the following characteristics:
 - (I) A defined performance and audience space.
 - (II) Mixing equipment, a public address system, and a lighting rig.
 - (III) Engages 1 or more individuals to carry out not less than 2 of the following roles:
 - (aa) A sound engineer.
 - (bb) A booker.
 - (cc) A promoter.
 - (dd) A stage manager.
 - (ee) Security personnel.
 - (ff) A box office manager.
 - (IV) There is a paid ticket or cover charge to attend most performances and artists are paid fairly and do not play for free or solely for tips, except for fundraisers or similar charitable events.
 - (V) For a venue owned or operated by a non-profit entity that produces free events, the events are produced and managed primarily by paid employees, not by volunteers.
 - (VI) Performances are marketed through listings in printed or electronic publications, on websites, by mass email, or on social media.
- (iv) A motion picture theatre or motion picture theatres operated by the motion picture theatre operator have the following characteristics:
 - (I) At least 1 auditorium that includes a motion picture screen and fixed audience seating.
 - (II) A projection booth or space containing not less than 1 motion picture projector.
 - (III) A paid ticket charge to attend exhibition of motion pictures.
 - (IV) Motion picture exhibitions are marketed through showtime listings in printed or electronic publications, on websites, by mass mail, or on social media.
- (v) The relevant museum or relevant museums for which the relevant museum operator is seeking a grant under this section have the following characteristics:
 - (I) Serving as a relevant museum as its principal business activity.
 - (II) Indoor exhibition spaces that are a component of the principal business activity and which have been subjected to pandemic-related occupancy restrictions.

H. R. 133—843

(III) At least 1 auditorium, theater, or performance or lecture hall with fixed audience seating and regular programming.

(vi)(I) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative does not have, or is not majority owned or controlled by an entity with, any of the following characteristics:

(aa) Being an issuer, the securities of which are listed on a national securities exchange.

(bb) Receiving more than 10 percent of gross revenue from Federal funding during 2019, excluding amounts received by the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(II) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative does not have, or is not majority owned or controlled by an entity with, more than 2 of the following characteristics:

(aa) Owning or operating venues, relevant museums, motion picture theatres, or talent agencies or talent management companies in more than 1 country.

(bb) Owning or operating venues, relevant museums, motion picture theatres, or talent agencies or talent management companies in more than 10 States.

(cc) Employing more than 500 employees as of February 29, 2020, determined on a full-time equivalent basis in accordance with subparagraph (C).

(III) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative has not received, on or after the date of enactment of this Act, a loan guaranteed under paragraph (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as amended and added by this division.

(IV) For purposes of applying the characteristics described in subclauses (I), (II), and (III) to an entity owned by a State or a political subdivision of a State, the relevant entity—

(aa) shall be the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative; and

H. R. 133—844

(bb) shall not include entities of the State or political subdivision other than the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative.

(B) EXCLUSION.—The term “eligible person or entity” shall not include a live venue operator or promoter, theatrical producer, or live performing arts organization operator, a relevant museum operator, a motion picture theatre operator, or a talent representative that—

(i) presents live performances of a prurient sexual nature; or

(ii) derives, directly or indirectly, more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.

(C) CALCULATION OF FULL-TIME EMPLOYEES.—For purposes of determining the number of full-time equivalent employees under subparagraph (A)(vi)(II)(cc) of this paragraph and under paragraph (2)(E)—

(i) any employee working not fewer than 30 hours per week shall be considered a full-time employee; and

(ii) any employee working not fewer than 10 hours and fewer than 30 hours per week shall be counted as one-half of a full-time employee.

(D) MULTIPLE BUSINESS ENTITIES.—Each business entity of an eligible person or entity that also meets the requirements under subparagraph (A) and that is not described in subparagraph (B) shall be treated by the Administrator as an independent, non-affiliated entity for the purposes of this section.

(2) EXCHANGE; ISSUER; SECURITY.—The terms “exchange”, “issuer”, and “security” have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(3) LIVE VENUE OPERATOR OR PROMOTER, THEATRICAL PRODUCER, OR LIVE PERFORMING ARTS ORGANIZATION OPERATOR.—The term “live venue operator or promoter, theatrical producer, or live performing arts organization operator”—

(A) means—

(i) an individual or entity—

(I) that, as a principal business activity, organizes, promotes, produces, manages, or hosts live concerts, comedy shows, theatrical productions, or other events by performing artists for which—

(aa) a cover charge through ticketing or front door entrance fee is applied; and

(bb) performers are paid in an amount that is based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement; and

H. R. 133—845

(II) for which not less than 70 percent of the earned revenue of the individual or entity is generated through, to the extent related to a live event described in subclause (I), cover charges or ticket sales, production fees or production reimbursements, nonprofit educational initiatives, or the sale of event beverages, food, or merchandise; or

(ii) an individual or entity that, as a principal business activity, makes available for purchase by the public an average of not less than 60 days before the date of the event tickets to events—

(I) described in clause (i)(I); and

(II) for which performers are paid in an amount that is based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement; and

(B) includes an individual or entity described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

(4) MOTION PICTURE THEATRE OPERATOR.—The term “motion picture theatre operator” means an individual or entity that—

(A) as the principal business activity of the individual or entity, owns or operates at least 1 place of public accommodation for the purpose of motion picture exhibition for a fee; and

(B) includes an individual or entity described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

(5) NATIONAL SECURITIES EXCHANGE.—The term “national securities exchange” means an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(6) NONPROFIT.—The term “nonprofit”, with respect to an organization, means that the organization is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

(7) RELEVANT MUSEUM.—The term “relevant museum”—

(A) has the meaning given the term “museum” in section 273 of the Museum and Library Services Act (20 U.S.C. 9172); and

(B) shall not include any entity that is organized as a for-profit entity.

(8) SEASONAL EMPLOYER.—The term “seasonal employer” has the meaning given that term in subparagraph (A) of section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)), as amended by this Act.

(9) STATE.—The term “State” means—

H. R. 133—846

- (A) a State;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico; and
- (D) any other territory or possession of the United States.

(10) TALENT REPRESENTATIVE.—The term “talent representative”—

(A) means an agent or manager that—

(i) as not less than 70 percent of the operations of the agent or manager, is engaged in representing or managing artists and entertainers;

(ii) books or represents musicians, comedians, actors, or similar performing artists primarily at live events in venues or at festivals; and

(iii) represents performers described in clause (ii) that are paid in an amount that is based on the number of tickets sold, or a similar basis; and

(B) includes an agent or manager described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

(b) AUTHORITY.—

(1) IN GENERAL.—

(A) ADMINISTRATION.—The Associate Administrator for the Office of Disaster Assistance of the Administration shall coordinate and formulate policies relating to the administration of grants made under this section.

(B) CERTIFICATION OF NEED.—An eligible person or entity applying for a grant under this section shall submit a good faith certification that the uncertainty of current economic conditions makes necessary the grant to support the ongoing operations of the eligible person or entity.

(2) INITIAL GRANTS.—

(A) IN GENERAL.—The Administrator may make initial grants to eligible persons or entities in accordance with this section.

(B) INITIAL PRIORITIES FOR AWARDING GRANTS.—

(i) FIRST PRIORITY IN AWARDING GRANTS.—During the initial 14-day period during which the Administrator awards grants under this paragraph, the Administrator shall only award grants to an eligible person or entity with revenue, during the period beginning on April 1, 2020 and ending on December 31, 2020, that is not more than 10 percent of the revenue of the eligible person or entity during the period beginning on April 1, 2019 and ending on December 31, 2019, due to the COVID-19 pandemic.

(ii) SECOND PRIORITY IN AWARDING GRANTS.—During the 14-day period immediately following the 14-day period described in clause (i), the Administrator shall only award grants to an eligible person or entity with revenue, during the period beginning on April 1, 2020 and ending on December 31, 2020, that is not more than 30 percent of the revenue of the eligible

H. R. 133—847

person or entity during the period beginning on April 1, 2019 and ending on December 31, 2019, due to the COVID-19 pandemic.

(iii) DETERMINATION OF REVENUE.—For purposes of clauses (i) and (ii)—

(I) any amounts received by an eligible person or entity under the CARES Act (Public Law 116-136; 134 Stat. 281) or an amendment made by the CARES Act shall not be counted as revenue of an eligible person or entity;

(II) the Administrator shall use an accrual method of accounting for determining revenue; and

(III) the Administrator may use alternative methods to establish revenue losses for an eligible person or entity that is a seasonal employer and that would be adversely impacted if January, February, and March are excluded from the calculation of year-over-year revenues.

(iv) LIMIT ON USE OF AMOUNTS FOR PRIORITY APPLICANTS.—The Administrator may use not more than 80 percent of the amounts appropriated under section 323(d)(1)(H) of this Act to carry out this section to make initial grants under this paragraph to eligible persons or entities described in clause (i) or (ii) of this subparagraph that apply for a grant under this paragraph during the initial 28-day period during which the Administrator awards grants under this paragraph.

(C) GRANTS AFTER PRIORITY PERIODS.—After the end of the initial 28-day period during which the Administrator awards grants under this paragraph, the Administrator may award an initial grant to any eligible person or entity.

(D) LIMITS ON NUMBER OF INITIAL GRANTS TO AFFILIATES.—Not more than 5 business entities of an eligible person or entity that would be considered affiliates under the affiliation rules of the Administration may receive a grant under this paragraph.

(E) SET-ASIDE FOR SMALL EMPLOYERS.—

(i) IN GENERAL.—Subject to clause (ii), not less than \$2,000,000,000 of the total amount of grants made available under this paragraph shall be awarded to eligible persons or entities which employ not more than 50 full-time employees, determined in accordance with subsection (a)(1)(C).

(ii) TIME LIMIT.—Clause (i) shall not apply on and after the date that is 60 days after the Administrator begins awarding grants under this section and, on and after such date, amounts available for grants under this section may be used for grants under this section to any eligible person or entity.

(3) SUPPLEMENTAL GRANTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Administrator may make a supplemental grant in accordance with this section to an eligible person or entity that receives a grant under paragraph (2) if, as of April 1, 2021, the revenues of the eligible person or entity for the most recent calendar quarter are not more than 30

H. R. 133—848

percent of the revenues of the eligible person or entity for the corresponding calendar quarter during 2019 due to the COVID-19 pandemic.

(B) PROCESSING TIMELY INITIAL GRANT APPLICATIONS FIRST.—The Administrator may not award a supplemental grant under subparagraph (A) until the Administrator has completed processing (including determining whether to award a grant) each application for an initial grant under paragraph (2) that is submitted by an eligible person or entity on or before the date that is 60 days after the date on which the Administrator begins accepting such applications.

(4) CERTIFICATION.—An eligible person or entity applying for a grant under this section that is an eligible business described in the matter preceding subclause (I) of section 4003(c)(3)(D)(i) of the CARES Act (15 U.S.C. 9042(c)(3)(D)(i)), shall make a good-faith certification described in subclauses (IX) and (X) of such section.

(c) AMOUNT.—

(1) INITIAL GRANTS.—

(A) IN GENERAL.—A grant under subsection (b)(2) shall be in the amount equal to the lesser of—

(i)(I) for an eligible person or entity that was in operation on January 1, 2019, the amount equal to 45 percent of the gross earned revenue of the eligible person or entity during 2019; or

(II) for an eligible person or entity that began operations after January 1, 2019, the amount equal to the product obtained by multiplying—

(aa) the average monthly gross earned revenue for each full month during which the eligible person or entity was in operation during 2019; by

(bb) 6; or

(ii) \$10,000,000.

(B) APPLICATION TO RELEVANT MUSEUM OPERATORS.—A relevant museum operator may not receive grants under subsection (b)(2) in a total amount that is more than \$10,000,000 with respect to all relevant museums operated by the relevant museum operator.

(2) SUPPLEMENTAL GRANTS.—A grant under subsection (b)(3) shall be in the amount equal to 50 percent of the grant received by the eligible person or entity under subsection (b)(2).

(3) OVERALL MAXIMUMS.—The total amount of grants received under paragraphs (2) and (3) of subsection (b) by an eligible person or entity shall be not more than \$10,000,000.

(d) USE OF FUNDS.—

(1) TIMING.—

(A) EXPENSES INCURRED.—

(i) IN GENERAL.—Except as provided in clause (ii), amounts received under a grant under this section may be used for costs incurred during the period beginning on March 1, 2020, and ending on December 31, 2021.

(ii) EXTENSION FOR SUPPLEMENTAL GRANTS.—If an eligible person or entity receives a grant under subsection (b)(3), amounts received under either grant under this section may be used for costs incurred

H. R. 133—849

during the period beginning on March 1, 2020, and ending on June 30, 2022.

(B) EXPENDITURE.—

(i) IN GENERAL.—Except as provided in clause (ii), an eligible person or entity shall return to the Administrator any amounts received under a grant under this section that are not expended on or before the date that is 1 year after the date of disbursement of the grant.

(ii) EXTENSION FOR SUPPLEMENTAL GRANTS.—If an eligible person or entity receives a grant under subsection (b)(3), the eligible person or entity shall return to the Administrator any amounts received under either grant under this section that are not expended on or before the date that is 18 months after the date of disbursement to the eligible person or entity of the grant under subsection (b)(2).

(2) ALLOWABLE EXPENSES.—

(A) DEFINITIONS.—In this paragraph—

(i) the terms “covered mortgage obligation”, “covered rent obligation”, “covered utility payment”, and “covered worker protection expenditure” have the meanings given those terms in section 7A(a) of the Small Business Act, as redesignated, transferred, and amended by this Act; and

(ii) the term “payroll costs” has the meaning given that term in section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)).

(B) EXPENSES.—An eligible person or entity may use amounts received under a grant under this section for—

- (i) payroll costs;
- (ii) payments on any covered rent obligation;
- (iii) any covered utility payment;
- (iv) scheduled payments of interest or principal on any covered mortgage obligation (which shall not include any prepayment of principal on a covered mortgage obligation);
- (v) scheduled payments of interest or principal on any indebtedness or debt instrument (which shall not include any prepayment of principal) incurred in the ordinary course of business that is a liability of the eligible person or entity and was incurred prior to February 15, 2020;
- (vi) covered worker protection expenditures;
- (vii) payments made to independent contractors, as reported on Form-1099 MISC, not to exceed a total of \$100,000 in annual compensation for any individual employee of an independent contractor; and
- (viii) other ordinary and necessary business expenses, including—

- (I) maintenance expenses;
- (II) administrative costs, including fees and licensing costs;
- (III) State and local taxes and fees;
- (IV) operating leases in effect as of February 15, 2020;

H. R. 133—850

(V) payments required for insurance on any insurance policy; and

(VI) advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production, concert, exhibition, or comedy show, except that a grant under this section may not be used primarily for such expenditures.

(3) PROHIBITED EXPENSES.—An eligible person or entity may not use amounts received under a grant under this section—

(A) to purchase real estate;

(B) for payments of interest or principal on loans originated after February 15, 2020;

(C) to invest or re-lend funds;

(D) for contributions or expenditures to, or on behalf of, any political party, party committee, or candidate for elective office; or

(E) for any other use as may be prohibited by the Administrator.

(e) INCREASED OVERSIGHT OF SHUTTERED VENUE OPERATOR GRANTS.—The Administrator shall increase oversight of eligible persons and entities receiving grants under this section, which may include the following:

(1) DOCUMENTATION.—Additional documentation requirements that are consistent with the eligibility and other requirements under this section, including requiring an eligible person or entity that receives a grant under this section to retain records that document compliance with the requirements for grants under this section—

(A) with respect to employment records, for the 4-year period following receipt of the grant; and

(B) with respect to other records, for the 3-year period following receipt of the grant.

(2) REVIEWS OF USE.—Reviews of the use of the grant proceeds by an eligible person or entity to ensure compliance with requirements established under this section and by the Administrator, including that the Administrator may—

(A) review and audit grants under this section; and

(B) in the case of fraud or other material noncompliance with respect to a grant under this section—

(i) require repayment of misspent funds; or

(ii) pursue legal action to collect funds.

(f) SHUTTERED VENUE OVERSIGHT AND AUDIT PLAN.—

(1) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, 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—

(A) the policies and procedures of the Administrator for conducting oversight and audits of grants under this section; and

(B) the metrics that the Administrator shall use to determine which grants under this section will be audited pursuant to subsection (e).

(2) REPORTS.—Not later than 60 days after the date of enactment of this Act, and each month thereafter until the

H. R. 133—851

date that is 1 year after the date on which all amounts made available under section 323(d)(1)(H) of this Act have been expended, 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 oversight and audit activities of the Administrator under this subsection, which shall include—

(A) the total number of initial grants approved and disbursed;

(B) the total amount of grants received by each eligible person or entity, including any supplemental grants;

(C) the number of active investigations and audits of grants under this section;

(D) the number of completed reviews and audits of grants under this section, including a description of any findings of fraud or other material noncompliance.

(E) any substantial changes made to the oversight and audit plan submitted under paragraph (1).

SEC. 325. EXTENSION OF THE DEBT RELIEF PROGRAM.

(a) IN GENERAL.—Section 1112 of the CARES Act (15 U.S.C. 9011) is amended—

(1) in subsection (c)—

(A) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—Subject to the other provisions of this section, the Administrator shall pay the principal, interest, and any associated fees that are owed on a covered loan in a regular servicing status, without regard to the date on which the covered loan is fully disbursed, and subject to availability of funds, as follows:

“(A) With respect to a covered loan made before the date of enactment of this Act and not on deferment, the Administrator shall make those payments as follows:

“(i) The Administrator shall make those payments for the 6-month period beginning with the next payment due on the covered loan.

“(ii) In addition to the payments under clause (i)—

“(I) with respect to a covered loan other than a covered loan described in paragraph (1)(A)(i) or (2) of subsection (a), the Administrator shall make those payments for—

“(aa) the 3-month period beginning with the first payment due on the covered loan on or after February 1, 2021; and

“(bb) an additional 5-month period immediately following the end of the 3-month period provided under item (aa) if the covered loan is made to a borrower that, according to records of the Administration, is assigned a North American Industry Classification System code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812; and

“(II) with respect to a covered loan described in paragraph (1)(A)(i) or (2) of subsection (a), the Administrator shall make those payments for the

H. R. 133—852

8-month period beginning with the first payment due on the covered loan on or after February 1, 2021.

“(B) With respect to a covered loan made before the date of enactment of this Act and on deferment, the Administrator shall make those payments as follows:

“(i) The Administrator shall make those payments for the 6-month period beginning with the next payment due on the covered loan after the deferment period.

“(ii) In addition to the payments under clause (i)—

“(I) with respect to a covered loan other than a covered loan described in paragraph (1)(A)(i) or (2) of subsection (a), the Administrator shall make those payments for—

“(aa) the 3-month period (beginning on or after February 1, 2021) beginning with the later of—

“(AA) the next payment due on the covered loan after the deferment period; or

“(BB) the first month after the Administrator has completed the payments under clause (i); and

“(bb) an additional 5-month period immediately following the end of the 3-month period provided under item (aa) if the covered loan is made to a borrower that, according to records of the Administration, is assigned a North American Industry Classification System code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812; and

“(II) with respect to a loan described in paragraph (1)(A)(i) or (2) of subsection (a), the 8-month period (beginning on or after February 1, 2021) beginning with the later of—

“(aa) the next payment due on the covered loan after the deferment period; or

“(bb) the first month after the payments under clause (i) are complete.

“(C) With respect to a covered loan made during the period beginning on the date of enactment of this Act and ending on the date that is 6 months after such date of enactment, for the 6-month period beginning with the first payment due on the covered loan.

“(D) With respect to a covered loan approved during the period beginning on February 1, 2021, and ending on September 30, 2021, for the 6-month period beginning with the first payment due on the covered loan.”; and

(B) by adding at the end the following:

“(4) LIMITATION.—

“(A) IN GENERAL.—No single monthly payment of principal, interest, and associated fees made by the Administrator under subparagraph (A)(ii), (B)(ii), or (D) of paragraph (1) with respect to a covered loan may be in a total amount that is more than \$9,000.

H. R. 133—853

“(B) TREATMENT OF ADDITIONAL AMOUNTS OWED.—If, for a month, the total amount of principal, interest, and associated fees that are owed on a covered loan for which the Administration makes payments under paragraph (1) is more than \$9,000 the Administrator may require the lender with respect to the covered loan to add the amount by which those costs exceed \$9,000 for that month as interest to be paid by the borrower with respect to the covered loan at the end of the loan period.

“(5) ADDITIONAL PROVISIONS FOR NEW LOANS.—With respect to a loan described in paragraph (1)(C)—

“(A) the Administrator may further extend the period described in paragraph (1)(C) if there are sufficient funds to continue those payments; and

“(B) during the underwriting process, a lender of such a loan may consider the payments under this section as part of a comprehensive review to determine the ability to repay over the entire period of maturity of the loan.

“(6) ELIGIBILITY.—Eligibility for a covered loan to receive such payments of principal, interest, and any associated fees under this subsection shall be based on the date on which the covered loan is approved by the Administration.

“(7) AUTHORITY TO REVISE EXTENSIONS.—

“(A) IN GENERAL.—The Administrator shall monitor whether amounts made available to make payments under this subsection are sufficient to make the payments for the periods described in paragraph (1).

“(B) PLAN.—If the Administrator determines under subparagraph (A) that the amounts made available to make payments under this subsection are insufficient, the Administrator shall—

“(i) develop a plan to proportionally reduce the number of months provided for each period described in paragraph (1), while ensuring all amounts made available to make payments under this subsection are fully expended; and

“(ii) before taking action under the plan developed under clause (i), submit to Congress a report regarding the plan, which shall include the data that informs the plan.

“(8) ADDITIONAL REQUIREMENTS.—With respect to the payments made under this subsection—

“(A) no lender may charge a late fee to a borrower with respect to a covered loan during any period in which the Administrator makes payments with respect to the covered loan under paragraph (1); and

“(B) the Administrator shall, with respect to a covered loan, make all payments with respect to the covered loan under paragraph (1) not later than the 15th day of the applicable month.

“(9) RULE OF CONSTRUCTION.—Except as provided in paragraph (4), nothing in this subsection may be construed to preclude a borrower from receiving full payments of principal, interest, and any associated fees authorized under this subsection with respect to a covered loan.”;

(2) by redesignating subsection (f) as subsection (i); and
(3) by inserting after subsection (e) the following:

H. R. 133—854

“(f) ELIGIBILITY FOR NEW LOANS.—For each individual lending program under this section, the Administrator may establish a minimum loan maturity period, taking into consideration the normal underwriting requirements for each such program, with the goal of preventing abuse under the program.

“(g) LIMITATION ON ASSISTANCE.—A borrower may not receive assistance under subsection (c) for more than 1 covered loan of the borrower described in paragraph (1)(C) of that subsection.

“(h) REPORTING AND OUTREACH.—

“(1) UPDATED INFORMATION.—

“(A) IN GENERAL.—Not later than 14 days after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, the Administrator shall make publicly available information regarding the modifications to the assistance provided under this section under the amendments made by such Act.

“(B) GUIDANCE.—Not later than 21 days after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act the Administrator shall issue guidance on implementing the modifications to the assistance provided under this section under the amendments made by such Act.

“(2) PUBLICATION OF LIST.—Not later than March 1, 2021, the Administrator shall transmit to each lender of a covered loan a list of each borrower of a covered loan that includes the North American Industry Classification System code assigned to the borrower, based on the records of the Administration, to assist the lenders in identifying which borrowers qualify for an extension of payments under subsection (c).

“(3) EDUCATION AND OUTREACH.—The Administrator shall provide education, outreach, and communication to lenders, borrowers, district offices, and resource partners of the Administration in order to ensure full and proper compliance with this section, encourage broad participation with respect to covered loans that have not yet been approved by the Administrator, and help lenders transition borrowers from subsidy payments under this section directly to a deferral when suitable for the borrower.

“(4) NOTIFICATION.—Not later than 30 days after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, the Administrator shall mail a letter to each borrower of a covered loan that includes—

“(A) an overview of assistance provided under this section;

“(B) the rights of the borrower to receive that assistance;

“(C) how to seek recourse with the Administrator or the lender of the covered loan if the borrower has not received that assistance; and

“(D) the rights of the borrower to request a loan deferral from a lender, and guidance on how to do successfully transition directly to a loan deferral once subsidy payments under this section are concluded.

“(5) MONTHLY REPORTING.—Not later than the 15th of each month beginning after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues

H. R. 133—855

Act, the Administrator shall submit to Congress a report on assistance provided under this section, which shall include—

“(A) monthly and cumulative data on payments made under this section as of the date of the report, including a breakdown by—

“(i) the number of participating borrowers;

“(ii) the volume of payments made for each type of covered loan; and

“(iii) the volume of payments made for covered loans made before the date of enactment of this Act and loans made after such date of enactment;

“(B) the names of any lenders of covered loans that have not submitted information on the covered loans to the Administrator during the preceding month; and

“(C) an update on the education and outreach activities of the Administration carried out under paragraph (3).”.

(b) EFFECTIVE DATE; APPLICABILITY.—The amendments made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281).

SEC. 326. MODIFICATIONS TO 7(a) LOAN PROGRAMS.

(a) 7(a) LOAN GUARANTEES.—

(1) IN GENERAL.—Section 7(a)(2)(A) of the Small Business Act (15 U.S.C. 636(a)(2)(A)) is amended by striking “), such participation by the Administration shall be equal to” and all that follows through the period at the end and inserting “or the Community Advantage Pilot Program of the Administration), such participation by the Administration shall be equal to 90 percent of the balance of the financing outstanding at the time of disbursement of the loan.”.

(2) PROSPECTIVE REPEAL.—Effective October 1, 2021, section 7(a)(2)(A) of the Small Business Act (15 U.S.C. 636(a)(2)(A)), as amended by paragraph (1), is amended to read as follows:

“(A) IN GENERAL.—Except as provided in subparagraphs (B), (D), (E), and (F), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

“(i) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds \$150,000; or

“(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to \$150,000.”.

(b) EXPRESS LOANS.—

(1) LOAN AMOUNT.—Section 1102(c)(2) of the CARES Act (Public Law 116–136; 15 U.S.C. 636 note) is amended to read as follows:

“(2) PROSPECTIVE REPEAL.—Effective on October 1, 2021, section 7(a)(31)(D) of the Small Business Act (15 U.S.C. 636(a)(31)(D)) is amended by striking ‘\$1,000,000’ and inserting ‘\$500,000’.”.

(2) GUARANTEE RATES.—

(A) TEMPORARY MODIFICATION.—Section 7(a)(31)(A)(iv) of the Small Business Act (15 U.S.C. 636(a)(31)(A)(iv)) is

H. R. 133—856

amended by striking “with a guaranty rate of not more than 50 percent.” and inserting the following: “with a guarantee rate—

“(I) for a loan in an amount less than or equal to \$350,000, of not more than 75 percent; and

“(II) for a loan in an amount greater than \$350,000, of not more than 50 percent.”.

(B) PROSPECTIVE REPEAL.—Effective October 1, 2021, section 7(a)(31)(A)(iv) of the Small Business Act (15 U.S.C. 636(a)(31)(iv)), as amended by subparagraph (A), is amended by striking “guarantee rate” and all that follows through the period at the end and inserting “guarantee rate of not more than 50 percent.”.

SEC. 327. TEMPORARY FEE REDUCTIONS.**(a) ADMINISTRATIVE FEE WAIVER.—**

(1) IN GENERAL.—During the period beginning on the date of enactment of this Act and ending on September 30, 2021, and to the extent that the cost of such elimination or reduction of fees is offset by appropriations, with respect to each loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) (including a recipient of assistance under the Community Advantage Pilot Program of the Administration) for which an application is approved or pending approval on or after the date of enactment of this Act, the Administrator shall—

(A) in lieu of the fee otherwise applicable under section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)), collect no fee or reduce fees to the maximum extent possible; and

(B) in lieu of the fee otherwise applicable under section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), collect no fee or reduce fees to the maximum extent possible.

(2) APPLICATION OF FEE ELIMINATIONS OR REDUCTIONS.—To the extent that amounts are made available to the Administrator for the purpose of fee eliminations or reductions under paragraph (1), the Administrator shall—

(A) first use any amounts provided to eliminate or reduce fees paid by small business borrowers under clauses (i) through (iii) of section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), to the maximum extent possible; and

(B) then use any amounts provided to eliminate or reduce fees under 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)).

(b) TEMPORARY FEE ELIMINATION FOR THE 504 LOAN PROGRAM.—

(1) IN GENERAL.—During the period beginning on the date of enactment of this Act and ending on September 30, 2021, and to the extent the cost of such elimination in fees is offset by appropriations, with respect to each project or loan guaranteed by the Administrator pursuant to title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) for which an application is approved or pending approval on or after the date of enactment of this Act—

H. R. 133—857

(A) the Administrator shall, in lieu of the fee otherwise applicable under section 503(d)(2) of the Small Business Investment Act of 1958 (15 U.S.C. 697(d)(2)), collect no fee; and

(B) a development company shall, in lieu of the processing fee under section 120.971(a)(1) of title 13, Code of Federal Regulations (relating to fees paid by borrowers), or any successor regulation, collect no fee.

(2) REIMBURSEMENT FOR WAIVED FEES.—

(A) IN GENERAL.—To the extent that the cost of such payments is offset by appropriations, the Administrator shall reimburse each development company that does not collect a processing fee pursuant to paragraph (1)(B).

(B) AMOUNT.—The payment to a development company under clause (i) shall be in an amount equal to 1.5 percent of the net debenture proceeds for which the development company does not collect a processing fee pursuant to paragraph (1)(B).

SEC. 328. LOW-INTEREST REFINANCING.

(a) LOW-INTEREST REFINANCING UNDER THE LOCAL DEVELOPMENT BUSINESS LOAN PROGRAM.—

(1) REPEAL.—Section 521(a) of title V of division E of the Consolidated Appropriations Act, 2016 (15 U.S.C. 696 note) is repealed.

(2) REFINANCING.—Section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended—

(A) in subparagraph (B), in the matter preceding clause (i), by striking “50” and inserting “100”; and

(B) by adding at the end the following:

“(C) REFINANCING NOT INVOLVING EXPANSIONS.—

“(i) DEFINITIONS.—In this subparagraph—

“(I) the term ‘borrower’ means a small business concern that submits an application to a development company for financing under this subparagraph;

“(II) the term ‘eligible fixed asset’ means tangible property relating to which the Administrator may provide financing under this section; and

“(III) the term ‘qualified debt’ means indebtedness—

“(aa) that was incurred not less than 6 months before the date of the application for assistance under this subparagraph;

“(bb) that is a commercial loan;

“(cc) the proceeds of which were used to acquire an eligible fixed asset;

“(dd) that was incurred for the benefit of the small business concern; and

“(ee) that is collateralized by eligible fixed assets.

“(ii) AUTHORITY.—A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if—

“(I) the amount of the financing is not more than 90 percent of the value of the collateral for the financing, except that, if the appraised value

H. R. 133—858

of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency;

“(II) the borrower has been in operation for all of the 2-year period ending on the date the loan application is submitted; and

“(III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

“(iii) FINANCING FOR BUSINESS EXPENSES.—

“(I) FINANCING FOR BUSINESS EXPENSES.—The Administrator may provide financing to a borrower that receives financing that includes a refinancing of qualified debt under clause (ii), in addition to the refinancing under clause (ii), to be used solely for the payment of business expenses.

“(II) APPLICATION FOR FINANCING.—An application for financing under subclause (I) shall include—

“(aa) a specific description of the expenses for which the additional financing is requested; and

“(bb) an itemization of the amount of each expense.

“(III) CONDITION ON ADDITIONAL FINANCING.—

A borrower may not use any part of the financing under this clause for non-business purposes.

“(iv) LOANS BASED ON JOBS.—

“(I) JOB CREATION AND RETENTION GOALS.—

“(aa) IN GENERAL.—The Administrator may provide financing under this subparagraph for a borrower that meets the job creation goals under subsection (d) or (e) of section 501.

“(bb) ALTERNATE JOB RETENTION GOAL.—The Administrator may provide financing under this subparagraph to a borrower that does not meet the goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$75,000.

“(II) NUMBER OF EMPLOYEES.—For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

“(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

“(bb) the product obtained by multiplying—

“(AA) the number of part-time employees of the borrower on the date

H. R. 133—859

on which the borrower applies for a loan under this subparagraph, by

“(BB) the quotient obtained by dividing the average number of hours each part time employee of the borrower works each week by 40.

“(v) TOTAL AMOUNT OF LOANS.—The Administrator may provide not more than a total of \$7,500,000,000 of financing under this subparagraph for each fiscal year.”.

(b) EXPRESS LOAN AUTHORITY FOR ACCREDITED LENDERS.—

(1) IN GENERAL.—Section 507 of the Small Business Investment Act of 1958 (15 U.S.C. 697d) is amended by striking subsection (e) and inserting the following:

“(e) EXPRESS LOAN AUTHORITY.—A local development company designated as an accredited lender in accordance with subsection (b)—

“(1) may—

“(A) approve, authorize, close, and service covered loans that are funded with proceeds of a debenture issued by the company; and

“(B) authorize the guarantee of a debenture described in subparagraph (A); and

“(2) with respect to a covered loan, shall be subject to final approval as to eligibility of any guarantee by the Administration pursuant to section 503(a), but such final approval shall not include review of decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

“(f) DEFINITIONS.—In this section—

“(1) the term ‘accredited lender certified company’ means a certified development company that meets the requirements under subsection (b), including a certified development company that the Administration has designated as an accredited lender under that subsection;

“(2) the term ‘covered loan’—

“(A) means a loan made under section 502 in an amount that is not more than \$500,000; and

“(B) does not include a loan made to a borrower that is in an industry that has a high rate of default, as annually determined by the Administrator and reported in rules of the Administration; and

“(3) the term ‘qualified State or local development company’ has the meaning given the term in section 503(e).”.

(2) PROSPECTIVE REPEAL.—Effective on September 30, 2023, section 507 of the Small Business Investment Act of 1958 (15 U.S.C. 697d), as amended by paragraph (1), is amended by striking subsections (e) and (f) and inserting the following:

“(e) DEFINITION.—In this section, the term ‘qualified State or local development company’ has the meaning given the term in section 503(e).”.

(c) REFINANCING SENIOR PROJECT DEBT.—During the 1-year period beginning on the date of enactment of this Act, a development company described in title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) is authorized to allow the refinancing of a senior loan on an existing project in an amount

H. R. 133—860

that, when combined with the outstanding balance on the development company loan, is not more than 90 percent of the total loan to value. Proceeds of such refinancing can be used to support business operating expenses.

SEC. 329. RECOVERY ASSISTANCE UNDER THE MICROLOAN PROGRAM.**(a) LOANS TO INTERMEDIARIES.—**

(1) **IN GENERAL.**—Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(A) in paragraph (3)(C)—

(i) by striking “and \$6,000,000” and inserting “\$10,000,000 (in the aggregate)”; and

(ii) by inserting before the period at the end the following: “, and \$4,500,000 in any of those remaining years”;

(B) in paragraph (4)—

(i) in subparagraph (A), by striking “subparagraph (C)” each place that term appears and inserting “subparagraphs (C) and (G)”; and

(ii) in subparagraph (C), by amending clause (i) to read as follows:

“(i) **IN GENERAL.**—In addition to grants made under subparagraph (A) or (G), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

“(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by 1 or more residents of an economically distressed area; or

“(II) the intermediary has a portfolio of loans made under this subsection—

“(aa) that averages not more than \$10,000 during the period of the intermediary’s participation in the program; or

“(bb) of which not less than 25 percent is serving rural areas during the period of the intermediary’s participation in the program.”; and

(iii) by adding at the end the following:

“(G) **GRANT AMOUNTS BASED ON APPROPRIATIONS.**—In any fiscal year in which the amount appropriated to make grants under subparagraph (A) is sufficient to provide to each intermediary that receives a loan under paragraph (1)(B)(i) a grant of not less than 25 percent of the total outstanding balance of loans made to the intermediary under this subsection, the Administration shall make a grant under subparagraph (A) to each intermediary of not less than 25 percent and not more than 30 percent of that total outstanding balance for the intermediary.”; and

(C) in paragraph (11)—

(i) in subparagraph (C)(ii), by striking all after the semicolon and inserting “and”; and

(ii) by striking all after subparagraph (C) and inserting the following:

“(D) the term ‘economically distressed area’, as used in paragraph (4), means a county or equivalent division

H. R. 133—861

of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.”.

(2) PROSPECTIVE AMENDMENT.—Effective on October 1, 2021, section 7(m)(3)(C) of the Small Business Act (15 U.S.C. 636(m)(3)(C)), as amended by paragraph (1)(A), is amended—

(A) by striking “ \$10,000,000” and by inserting “ \$7,000,000”; and

(B) by striking “ \$4,500,000” and inserting “ \$3,000,000”.

(b) TEMPORARY WAIVER OF TECHNICAL ASSISTANCE GRANTS MATCHING REQUIREMENTS AND FLEXIBILITY ON PRE- AND POST-LOAN ASSISTANCE.—During the period beginning on the date of enactment of this Act and ending on September 30, 2021, the Administration shall waive—

(1) the requirement to contribute non-Federal funds under section 7(m)(4)(B) of the Small Business Act (15 U.S.C. 636(m)(4)(B)); and

(2) the limitation on amounts allowed to be expended to provide information and technical assistance under clause (i) of section 7(m)(4)(E) of the Small Business Act (15 U.S.C. 636(m)(4)(E)) and enter into third party contracts for the provision of technical assistance under clause (ii) of such section 7(m)(4)(E).

(c) TEMPORARY DURATION OF LOANS TO BORROWERS.—

(1) IN GENERAL.—During the period beginning on the date of enactment of this Act and ending on September 30, 2021, the duration of a loan made by an eligible intermediary under section 7(m) of the Small Business Act (15 U.S.C. 636(m))—

(A) to an existing borrower may be extended to not more than 8 years; and

(B) to a new borrower may be not more than 8 years.

(2) REVERSION.—On and after October 1, 2021, the duration of a loan made by an eligible intermediary to a borrower under section 7(m) of the Small Business Act (15 U.S.C. 636(m)) shall be 7 years or such other amount established by the Administrator.

(d) FUNDING.—Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end the following:

“(h) MICROLOAN PROGRAM.—For each of fiscal years 2021 through 2025, the Administration is authorized to make—

“(1) \$80,000,000 in technical assistance grants, as provided in section 7(m); and

“(2) \$110,000,000 in direct loans, as provided in section 7(m).”.

(e) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts provided under the Consolidated Appropriations Act, 2020 (Public Law 116–93; 133 Stat. 2317) for the program established under section 7(m) of the Small Business Act (15 U.S.C. 636(m)) and amounts provided for fiscal year 2021 for that program, there is authorized to be appropriated for fiscal year 2021, to remain available until expended—

(1) \$50,000,000 to provide technical assistance grants under such section 7(m); and

H. R. 133—862

(2) \$7,000,000 to provide direct loans under such section 7(m).

SEC. 330. EXTENSION OF PARTICIPATION IN 8(a) PROGRAM.

(a) **IN GENERAL.**—The Administrator shall ensure that a small business concern participating in the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) on or before September 9, 2020, may elect to extend such participation by a period of 1 year, regardless of whether the small business concern previously elected to suspend participation in the program pursuant to guidance of the Administrator.

(b) **EMERGENCY RULEMAKING AUTHORITY.**—Not later than 15 days after the date of enactment of this Act, the Administrator shall issue regulations to carry out this section without regard to the notice requirements under section 553(b) of title 5, United States Code.

SEC. 331. TARGETED EIDL ADVANCE FOR SMALL BUSINESS CONTINUITY, ADAPTATION, AND RESILIENCY.

(a) **DEFINITIONS.**—In this section:

(1) **AGRICULTURAL ENTERPRISE.**—The term “agricultural enterprise” has the meaning given the term in section 18(b) of the Small Business Act (15 U.S.C. 647(b)).

(2) **COVERED ENTITY.**—The term “covered entity”—

(A) means an eligible entity that—

(i) applies for a loan under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) during the covered period, including before the date of enactment of this Act;

(ii) is located in a low-income community;

(iii) has suffered an economic loss of greater than 30 percent; and

(iv) employs not more than 300 employees; and

(B) except with respect to an entity included under section 123.300(c) of title 13, Code of Federal Regulations, or any successor regulation, does not include an agricultural enterprise.

(3) **COVERED PERIOD.**—The term “covered period” has the meaning given the term in section 1110(a)(1) of the CARES Act (15 U.S.C. 9009(a)(1)), as amended by section 332 of this Act.

(4) **ECONOMIC LOSS.**—The term “economic loss” means, with respect to a covered entity—

(A) the amount by which the gross receipts of the covered entity declined during an 8-week period between March 2, 2020, and December 31, 2021, relative to a comparable 8-week period immediately preceding March 2, 2020, or during 2019; or

(B) if the covered entity is a seasonal business concern, such other amount determined appropriate by the Administrator.

(5) **ELIGIBLE ENTITY.**—The term “eligible entity” means an entity that, during the covered period, is eligible for a loan made under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)), as described in section 1110(b) of the CARES Act (15 U.S.C. 9009(b)).

H. R. 133—863

(6) **LOW-INCOME COMMUNITY.**—The term “low-income community” has the meaning given the term in section 45D(e) of the Internal Revenue Code of 1986.

(b) **ENTITLEMENT TO FULL AMOUNT.**—

(1) **IN GENERAL.**—Subject to paragraph (2), a covered entity, after submitting a request to the Administrator that the Administrator verifies under subsection (c), shall receive a total of \$10,000 under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)), without regard to whether—

(A) the applicable loan for which the covered entity applies or applied under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) is or was approved;

(B) the covered entity accepts or accepted the offer of the Administrator with respect to an approved loan described in subparagraph (A); or

(C) the covered entity has previously received a loan under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

(2) **EFFECT OF PREVIOUSLY RECEIVED AMOUNTS.**—

(A) **IN GENERAL.**—With respect to a covered entity that received an emergency grant under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)) before the date of enactment of this Act, the amount of the payment that the covered entity shall receive under this subsection (after satisfaction of the procedures required under subparagraph (B)) shall be the difference between \$10,000 and the amount of that previously received grant.

(B) **PROCEDURES.**—If the Administrator receives a request under paragraph (1) from a covered entity described in subparagraph (A) of this paragraph, the Administrator shall, not later than 21 days after the date on which the Administrator receives the request—

(i) perform the verification required under subsection (c);

(ii) if the Administrator, under subsection (c), verifies that the entity is a covered entity, provide to the covered entity a payment in the amount described in subparagraph (A); and

(iii) with respect to a covered entity that the Administrator determines is not entitled to a payment under this section, provide the covered entity with a notification explaining why the Administrator reached that determination.

(C) **RULE OF CONSTRUCTION.**—Nothing in this paragraph may be construed to require any entity that received an emergency grant under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)) before the date of enactment of this Act to repay any amount of that grant.

(c) **VERIFICATION.**—In carrying out this section, the Administrator shall require any information, including any tax records, from an entity submitting a request under subsection (b) that the Administrator determines to be necessary to verify that the entity is a covered entity, without regard to whether the entity has previously submitted such information to the Administrator.

(d) **ORDER OF PROCESSING.**—The Administrator shall process and approve requests for payments under subsection (b) in the

H. R. 133—864

order that the Administrator receives the requests, except that the Administrator shall give—

(1) first priority to covered entities described in subsection (b)(2)(A); and

(2) second priority to covered entities that have not received emergency grants under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)), as of the date on which the Administrator receives such a request, because of the unavailability of funding to carry out such section 1110(e).

(e) **APPLICABILITY.**—In addition to any other restriction imposed under this section, any eligibility restriction applicable to a loan made under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)), including any restriction under section 123.300 or 123.301 of title 13, Code of Federal Regulations, or any successor regulation, shall apply with respect to funding provided under this section.

(f) **NOTIFICATION REQUIRED.**—The Administrator shall provide notice to each of the following entities stating that the entity may be eligible for a payment under this section if the entity satisfies the requirements under clauses (ii), (iii), and (iv) of subsection (a)(2)(A):

(1) Each entity that received an emergency grant under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)) before the date of enactment of this Act.

(2) Each entity that, before the date of enactment of this Act—

(A) applied for a loan under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)); and

(B) did not receive an emergency grant under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)) because of the unavailability of funding to carry out such section 1110(e).

(g) **ADMINISTRATION.**—In carrying out this section, the Administrator may rely on loan officers and other personnel of the Office of Disaster Assistance of the Administration and other resources of the Administration, including contractors of the Administration.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Administrator \$20,000,000,000 to carry out this section—

(1) which shall remain available through December 31, 2021; and

(2) of which \$20,000,000 is authorized to be appropriated to the Inspector General of the Administration to prevent waste, fraud, and abuse with respect to funding provided under this section.

SEC. 332. EMERGENCY EIDL GRANTS.

Section 1110 of the CARES Act (15 U.S.C. 9009) is amended—

(1) in subsection (a)(1), by striking “December 31, 2020” and inserting “December 31, 2021”;

(2) in subsection (d), by striking paragraphs (1) and (2) and inserting the following:

“(1) approve an applicant—

“(A) based solely on the credit score of the applicant;

or

“(B) by using alternative appropriate methods to determine an applicant’s ability to repay; and

H. R. 133—865

“(2) use information from the Department of the Treasury to confirm that—

“(A) an applicant is eligible to receive such a loan;

or

“(B) the information contained in an application for such a loan is accurate.”; and

(3) in subsection (e)—

(A) in paragraph (1)—

(i) by striking “During the covered period” and inserting the following:

“(A) ADVANCES.—During the covered period”;

(ii) in subparagraph (A), as so designated, by striking “within 3 days after the Administrator receives an application from such applicant”; and

(iii) by adding at the end the following:

“(B) TIMING.—With respect to each request submitted to the Administrator under subparagraph (A), the Administrator shall, not later than 21 days after the date on which the Administrator receives the request—

“(i) verify whether the entity is an entity that is eligible for a loan made under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) during the covered period, as described in subsection (b);

“(ii) if the Administrator, under clause (i), verifies that the entity submitting the request is an entity that is eligible, as described in that clause, provide the advance requested by the entity; and

“(iii) with respect to an entity that the Administrator determines is not entitled to receive an advance under this subsection, provide the entity with a notification explaining why the Administrator reached that determination.”;

(B) in paragraph (7), by striking “ \$20,000,000,000” and inserting “ \$40,000,000,000”; and

(C) in paragraph (8), by striking “December 31, 2020” and inserting “December 31, 2021”.

SEC. 333. REPEAL OF EIDL ADVANCE DEDUCTION.

(a) DEFINITIONS.—In this section—

(1) the term “covered entity” means an entity that receives an advance under section 1110(e) of the CARES Act (15 U.S.C. 9009(e)), including an entity that received such an advance before the date of enactment of this Act; and

(2) the term “covered period” has the meaning given the term in section 1110(a)(1) of the CARES Act (15 U.S.C. 9009(a)(1)), as amended by section 332 of this Act.

(b) SENSE OF CONGRESS.—It is the sense of Congress that borrowers of loans made under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) in response to COVID–19 during the covered period should be made whole, without regard to whether those borrowers are eligible for forgiveness with respect to those loans.

(c) REPEAL.—Section 1110(e)(6) of the CARES Act (15 U.S.C. 9009(e)(6)) is repealed.

(d) EFFECTIVE DATE; APPLICABILITY.—The amendment made by subsection (c) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281).

H. R. 133—866

(e) RULEMAKING.—

(1) IN GENERAL.—Not later than 15 days after the date of enactment of this Act, the Administrator shall issue rules that ensure the equal treatment of all covered entities with respect to the amendment made by subsection (c), which shall include consideration of covered entities that, before the date of enactment of this Act, completed the loan forgiveness process described in section 1110(e)(6) of the CARES Act (15 U.S.C. 9009(e)(6)), as in effect before that date of enactment.

(2) NOTICE AND COMMENT.—The notice and comment requirements under section 553 of title 5, United States Code, shall not apply with respect to the rules issued under paragraph (1).

SEC. 334. FLEXIBILITY IN DEFERRAL OF PAYMENTS OF 7(a) LOANS.

Section 7(a)(7) of the Small Business Act (15 U.S.C. 636(a)(7)) is amended—

(1) by striking “The Administration” and inserting “(A) IN GENERAL.—The Administrator”;

(2) in subparagraph (A), as so designated, by inserting “and interest” after “principal”; and

(3) by adding at the end the following:

“(B) DEFERRAL REQUIREMENTS.—With respect to a deferral provided under this paragraph, the Administrator may allow lenders under this subsection—

“(i) to provide full payment deferment relief (including payment of principal and interest) for a period of not more than 1 year; and

“(ii) to provide an additional deferment period if the borrower provides documentation justifying such additional deferment.

“(C) SECONDARY MARKET.—

“(i) IN GENERAL.—Except as provided in clause (ii), if an investor declines to approve a deferral or additional deferment requested by a lender under subparagraph (B), the Administrator shall exercise the authority to purchase the loan so that the borrower may receive full payment deferment relief (including payment of principal and interest) or an additional deferment as described in subparagraph (B).

“(ii) EXCEPTION.—If, in a fiscal year, the Administrator determines that the cost of implementing clause (i) is greater than zero, the Administrator shall not implement that clause.”.

SEC. 335. DOCUMENTATION REQUIRED FOR CERTAIN ELIGIBLE RECIPIENTS.

(a) IN GENERAL.—Section 7(a)(36)(D)(ii)(II) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(ii)(II)) is amended by striking “as is necessary” and all that follows through the period at the end and inserting “as determined necessary by the Administrator and the Secretary, to establish the applicant as eligible.”.

(b) EFFECTIVE DATE; APPLICABILITY.—The amendment made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

H. R. 133—867

SEC. 336. ELECTION OF 12-WEEK PERIOD BY SEASONAL EMPLOYERS.

(a) **IN GENERAL.**—Section 7(a)(36)(E)(i)(I)(aa)(AA) of the Small Business Act (15 U.S.C. 636(a)(36)(E)(i)(I)(aa)(AA)) is amended by striking “, in the case of an applicant” and all that follows through “June 30, 2019” and inserting the following: “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”.

(b) **EFFECTIVE DATE; APPLICABILITY.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendment made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

(2) **EXCLUSION OF LOANS ALREADY FORGIVEN.**—The amendment made by subsection (a) shall not apply to a loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) for which the borrower received forgiveness before the date of enactment of this Act under section 1106 of the CARES Act, as in effect on the day before such date of enactment.

SEC. 337. INCLUSION OF CERTAIN REFINANCING IN NONRECOURSE REQUIREMENTS.

(a) **IN GENERAL.**—Section 7(a)(36)(F)(v) of the Small Business Act (15 U.S.C. 636(a)(36)(F)(v)) is amended by striking “clause (i)” and inserting “clause (i) or (iv)”.

(b) **EFFECTIVE DATE; APPLICABILITY.**—The amendment made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

SEC. 338. APPLICATION OF CERTAIN TERMS THROUGH LIFE OF COVERED LOAN.

(a) **IN GENERAL.**—Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) is amended—

(1) in subparagraph (H), in the matter preceding clause (i), by striking “During the covered period, with” and inserting “With”;

(2) in subparagraph (J), in the matter preceding clause (i), by striking “During the covered period, with” and inserting “With”; and

(3) in subparagraph (M)—

(A) in clause (ii), in the matter preceding subclause (I), by striking “During the covered period, the” and inserting “The”; and

(B) in clause (iii), by striking “During the covered period, with” and inserting “With”.

(b) **EFFECTIVE DATE; APPLICABILITY.**—The amendments made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act

H. R. 133—868

(15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

SEC. 339. INTEREST CALCULATION ON COVERED LOANS.

(a) **DEFINITIONS.**—In this section, the terms “covered loan” and “eligible recipient” have the meanings given the terms in section 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)).

(b) **CALCULATION.**—Section 7(a)(36)(L) of the Small Business Act (15 U.S.C. 636(a)(36)(L)) is amended by inserting “, calculated on a non-compounding, non-adjustable basis” after “4 percent”.

(c) **APPLICABILITY.**—The amendment made by subsection (b) may apply with respect to a covered loan made before the date of enactment of this Act, upon the agreement of the lender and the eligible recipient with respect to the covered loan.

SEC. 340. REIMBURSEMENT FOR PROCESSING.

(a) **REIMBURSEMENT.**—Section 7(a)(36)(P) of the Small Business Act (15 U.S.C. 636(a)(36)(P)) is amended—

(1) by amending clause (i) to read as follows:

“(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 the date of enactment of this paragraph and ending on the day before the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, 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 the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, 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

H. R. 133—869

“(CC) 1 percent for a covered loan of not less than \$2,000,000.”; and

(2) by amending clause (iii) to read as follows:

“(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.”.

(b) FEE LIMITS.—

(1) IN GENERAL.—Section 7(a)(36)(P)(ii) of the Small Business Act (15 U.S.C. 636(a)(36)(P)(ii)) is amended by adding at the end the following: “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.”.

(2) EFFECTIVE DATE; APPLICABILITY.—The amendment made by paragraph (1) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

SEC. 341. DUPLICATION REQUIREMENTS FOR ECONOMIC INJURY DISASTER LOAN RECIPIENTS.

Section 7(a)(36)(Q) of the Small Business Act (15 U.S.C. 636(a)(36)(Q)) is amended by striking “during the period beginning on January 31, 2020, and ending on the date on which covered loans are made available”.

SEC. 342. PROHIBITION OF ELIGIBILITY FOR PUBLICLY-TRADED COMPANIES.

Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) is amended—

(1) in subparagraph (A), as amended by section 318 of this Act, by adding at the end the following:

“(xvi) the terms ‘exchange’, ‘issuer’, and ‘security’ have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).”; and

(2) in subparagraph (D), as amended by section 318 of this Act by adding at the end the following:

“(viii) INELIGIBILITY OF PUBLICLY-TRADED ENTITIES.—Notwithstanding any other provision of this paragraph, on and after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, an entity that is an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), shall be ineligible to receive a covered loan under this paragraph.”.

H. R. 133—870

SEC. 343. COVERED PERIOD FOR NEW PARAGRAPH (36) LOANS.

(a) **IN GENERAL.**—Section 7(a)(36)(A)(iii) of the Small Business Act (15 U.S.C. 636(a)(36)(A)(iii)) is amended by striking “December 31, 2020” and inserting “March 31, 2021”.

(b) **EFFECTIVE DATE; APPLICABILITY.**—The amendment made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281) and shall apply to any loan made pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) before, on, or after the date of enactment of this Act, including forgiveness of such a loan.

SEC. 344. APPLICABLE PERIODS FOR PRORATION.

Section 7(a)(36)(A)(viii) of the Small Business Act (15 U.S.C. 636(a)(36)(A)(viii)) is amended—

(1) in subclause (I)(bb), by striking “in 1 year, as prorated for the covered period” and inserting “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

(2) in subclause (II)—

(A) in item (aa), by striking “an annual salary of \$100,000, as prorated for the covered period” and inserting “\$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”; and

(B) in item (bb), by striking “covered” and inserting “applicable”.

SEC. 345. EXTENSION OF WAIVER OF MATCHING FUNDS REQUIREMENT UNDER THE WOMEN'S BUSINESS CENTER PROGRAM.

(a) **IN GENERAL.**—Section 1105 of the CARES Act (15 U.S.C. 9004) is amended by striking “the 3-month period beginning on the date of enactment of this Act” and inserting “the period beginning on the date of enactment of this Act and ending on June 30, 2021”.

(b) **EFFECTIVE DATE; APPLICABILITY.**—The amendment made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281).

SEC. 346. CLARIFICATION OF USE OF CARES ACT FUNDS FOR SMALL BUSINESS DEVELOPMENT CENTERS.

(a) **IN GENERAL.**—Section 1103(b)(3)(A) of the CARES Act (15 U.S.C. 9002(b)(3)(A)) is amended—

(1) by striking “The Administration” and inserting the following:

“(i) **IN GENERAL.**—The Administration”; and

(2) by adding at the end the following:

“(ii) **CLARIFICATION OF USE.**—Awards made under clause (i) shall be in addition to, and separate from, any amounts appropriated to make grants under section 21(a) of the Small Business Act (15 U.S.C. 648(a)) and such an award may be used to complement and support such a grant, except that priority with respect to the receipt of that assistance shall be given to small business development centers that have been affected by issues described in paragraph (2).”.

H. R. 133—871

(b) **EFFECTIVE DATE; APPLICABILITY.**—The amendments made by subsection (a) shall be effective as if included in the CARES Act (Public Law 116–136; 134 Stat. 281).

SEC. 347. GAO REPORT.

Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States 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 regarding the use by the Administration of funds made available to the Administration through supplemental appropriations in fiscal year 2020, the purpose of which was for administrative expenses.

SEC. 348. EFFECTIVE DATE; APPLICABILITY.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act and apply to loans and grants made on or after the date of enactment of this Act.

TITLE IV—TRANSPORTATION

Subtitle A—Airline Worker Support Extension

SEC. 401. DEFINITIONS.

Unless otherwise specified, the definitions in section 40102(a) of title 49, United States Code, shall apply to this subtitle, except that in this subtitle—

(1) the term “catering functions” means preparation, assembly, or both, of food, beverages, provisions and related supplies for delivery, and the delivery of such items, directly to aircraft or to a location on or near airport property for subsequent delivery to aircraft;

(2) the term “contractor” means—

(A) a person that performs, under contract with a passenger air carrier conducting operations under part 121 of title 14, Code of Federal Regulations—

(i) catering functions; or

(ii) functions on the property of an airport that are directly related to the air transportation of persons, property, or mail, including, but not limited to, the loading and unloading of property on aircraft, assistance to passengers under part 382 of title 14, Code of Federal Regulations, security, airport ticketing and check-in functions, ground-handling of aircraft, or aircraft cleaning and sanitization functions and waste removal; or

(B) a subcontractor that performs such functions;

(3) the term “employee” means an individual, other than a corporate officer, who is employed by an air carrier or a contractor;

(4) the term “recall” means the dispatch of a notice by a passenger air carrier or a contractor, via mail, courier, or electronic mail, to an involuntarily furloughed employee notifying the employee that—