

No. 2:20-cv-3098

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

IN RE: ASTRIA HEALTH, et al.
*Debtors.*¹

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

Appellants/Cross-Appellees,
v.

ASTRIA HEALTH, et al.,
Appellees/Cross-Appellants.

On Appeal from the United States Bankruptcy Court
for the Eastern District of Washington, Adv. No. 20-80016-WLH

APPELLANTS' SURREPLY BRIEF

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¹ The Debtors 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 (19-01202-11).



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4 85 Fed. Reg. 33,010 (June 1, 2020) 16

SUMMARY OF ARGUMENT

The United States, on behalf of Appellants and Cross-Appellees the U.S. Small Business Administration and Jovita Carranza as its Administrator (together, the “SBA” or “Appellants”), files this Surreply Brief, with leave of the Court (Dkt. 23), to address three events occurring subsequent to the United States’ prior briefing.

First, Congress has now amended the PPP to address bankrupt entities in the Consolidated Appropriations Act, 2021 (the “CAA”), PUB. L. NO. 116-260, 134 Stat. 1182 (2020). The Bankruptcy Court’s Preliminary Injunction is premised on the erroneous conclusion that Congress prohibited the SBA from considering bankruptcy status in extending PPP loan guarantees. As established in our prior briefing, that faulty conclusion is belied by the 1) the plain language of the CARES Act, which grants broad rulemaking authority to the SBA and explicitly incorporates the “terms, conditions, and processes” of SBA’s existing small business lending program; 2) the statutory requirement for SBA to ensure the “sound value” of PPP loans; and 3) the SBA’s long-standing consideration of bankruptcy status as part of its efforts to satisfy its “sound value” obligation. *See* Appellants’ Br. 29–32 (Dkt. 13); Appellants’ Resp. & Reply Br. 2, 5–6 (Dkt. 18).

The CAA now dispels any possible doubt about Congress’ intent with respect to bankrupt entities. First, for the first time, the CAA makes *certain* classes of bankrupt debtors potentially eligible for PPP loan guarantees. But, in doing so, Congress chose not to extend potential eligibility to traditional Chapter 11 debtors like Astria. Second,

1 under the CAA, the enumerated classes of debtors are only *potentially* eligible. The
2 CAA confirms the SBA's delegated authority to determine whether bankrupt entities
3 should be eligible for PPP loan guarantees. With these amendments, Congress has
4 made clear that 1) it does not now intend, and has never intended, to require the SBA
5 to extend PPP loan guarantees to traditional Chapter 11 debtors like Astria; and 2) the
6 authority to determine whether bankrupt debtors should be eligible for the PPP is, and
7 was always, delegated to the SBA. The Preliminary Injunction contradicts this clear
8 congressional intent and must be reversed.

11 The CAA also amends 11 U.S.C. § 525 to narrowly extend anti-discrimination
12 protection to certain mortgage relief provisions in the CARES Act. In amending
13 section 525, Congress could have, but chose not to extend section 525 to cover PPP
14 loans or government loan programs more broadly. This telling amendment provides
15 additional evidence demonstrating that section 525 does not apply to the PPP. Astria's
16 cross-appeal must therefore be denied.

19 Second, the Eleventh Circuit vacated a bankruptcy court's injunction against the
20 SBA, similar to that issued here, in *USF Federal Credit Union v. Gateway Radiology*
21 *Consultants, P.A. (In re Gateway Radiology Consultants, P.A.)*, --- F.3d ---, No. 20-
22 13462, 2020 WL 7579338 (11th Cir. Dec. 22, 2020). As established in the United
23 States' opening brief, the Preliminary Injunction contradicts the great majority of
24 courts that have denied plaintiffs' claims. *See* Appellants' Br. 14–15 (collecting
25 cases). This majority position is now bolstered by *Gateway*, which is the first opinion

1 from a federal circuit court of appeals addressing the merits of SBA's bankruptcy
2 exclusion. In *Gateway*, the Eleventh Circuit held, *inter alia*, that the bankruptcy
3 exclusion was not arbitrary or capricious, and, in doing so, rejected the legal
4 conclusions adopted by the Bankruptcy Court here.
5

6 And third, the Bankruptcy Court has now entered an order confirming the
7 Chapter 11 plan which explicitly acknowledges and accounts for the pending appeal.
8 Confirmation Order (Dec. 23, 2020, Bankr. Dkt. 2217).² This Court may thus award
9 effective relief by vacating the Preliminary Injunction in full accord with the
10 Confirmation Order, which refutes Astria's claim for equitable mootness.
11

12 ARGUMENT

13 14 **I. THE CONSOLIDATED APPROPRIATIONS ACT FATALY UNDERMINES THE** 15 **BANKRUPTCY COURT'S PRELIMINARY INJUNCTION AND ASTRIA'S CROSS-** 16 **APPEAL.**

17 On December 27, 2020, the President signed the CAA. The CAA contains
18 relevant amendments affecting both the PPP and 11 U.S.C. § 525 which fatally
19 undermine 1) the Bankruptcy Court's determination that Congress never intended for
20 SBA to exclude Chapter 11 debtors; and 2) Astria's cross-appeal under 11 U.S.C. §
21 525.
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² A copy of the Confirmation Order is attached as Exhibit A.
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A. The PPP Amendments Confirm that the SBA Had Authority to Exclude Chapter 11 Debtors, Including Astria.

The Bankruptcy Court’s Preliminary Injunction is premised on its conclusion that Congress intended for Chapter 11 debtors to be eligible for PPP loan guarantees. *See, e.g.*, A257–58 (Hr’g Tr. 111:24–112:2) (“Providing relief for [Chapter 11] debtors . . . is completely consistent with the legislative goals of the CARES Act.”); A258–59 (Hr’g Tr. 112:7–113:3) (concluding that helping “troubled businesses” like Chapter 11 debtors “motivated enactment of the CARES Act”). As demonstrated in the United States’ prior briefing, the Bankruptcy Court’s understanding of the CARES Act is incorrect because it disregards language in the CARES Act, the statutory “sound value” requirement in 15 U.S.C. § 636(a)(6), and the SBA’s long-standing consideration of bankruptcy status. *See* Appellants’ Br. 5–7, 31–32; Appellants’ Resp. & Reply Br. 2, 5–6. The CAA now confirms that Congress never intended to mandate the eligibility of Chapter 11 debtors, and instead intended to delegate authority to the SBA to determine whether bankrupt entities should be eligible for PPP loan guarantees.

The CAA reopens the PPP and appropriates additional funding for loan guarantees. *See* CAA § 323(a)(1)(B), (d)(1)(A), 134 Stat. at 2019.³ The CAA also expands PPP eligibility criteria in specific ways. For instance, Congress expanded

³ Excerpts containing the PPP amendments are attached as Exhibit B.

1 PPP eligibility to housing cooperatives, news organizations, and 501(c)(6) and
 2 destination marketing organizations. *Id.* § 316–318, 134 Stat. at 2011–15.

3 Of particular relevance here, in section 320 of the CAA, entitled “Bankruptcy
 4 Provisions,” Congress made *certain* categories of bankrupt debtors potentially
 5 eligible for PPP loans, subject to the SBA Administrator’s advance, categorical
 6 authorization.⁴ 134 Stat. at 2015. Specifically, section 320 amends the Bankruptcy
 7 Code to permit a bankruptcy court to “authorize a debtor in possession or a trustee
 8 that is authorized to operate the business of the debtor under section 1183, 1184,
 9 1203, 1204, or 1304 of [title 11]” to obtain a PPP loan. This list of bankruptcy code
 10 sections refers to three specific categories of debtors who are potentially eligible for
 11 PPP loans, subject to the SBA Administrator’s advance, express written
 12 determination:
 13

- 14 1. Debtors or trustees as set forth in subchapter V of chapter 11,
 15 created by the Small Business Reorganization Act to streamline
 16 bankruptcy for certain small businesses. 11 U.S.C. § 1183–84.
- 17 2. Debtors or trustees as set forth in chapter 12, which allows
 18 “family farmers” and “family fisherman” to restructure their
 19 finances. 11 U.S.C. § 1203–04.
 20
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24 ⁴ The amendments to the Bankruptcy Code in section 320 will become effective only
 25 if “the [SBA] submits to the Director of the Executive Office for United States
 26 Trustees a written determination that, subject to satisfying any other eligibility
 27 requirements, any debtor in possession or trustee that is authorized to operate the
 28 business of the debtor under section 1183, 1184, 1203, 1204, or 1304 of title 11, United
 States Code, would be eligible for a [PPP] loan.” § 320(f)(1)(A), 134 Stat. at 2016.

1 3. Debtors in chapter 13, which enables individuals with regular
2 income to develop a plan to repay all or part of their debt. 11
3 U.S.C. § 1304.

4 Of crucial importance, the list in section 320 does not extend potential
5 eligibility to traditional Chapter 11 debtors who operate under sections 1107 or 1108
6 of the bankruptcy code.⁵ Here, Astria is not proceeding under subchapter V, Chapter
7 12 or Chapter 13; instead, Astria filed a traditional chapter 11 bankruptcy, operating
8 under 11 U.S.C. § 1107. A009 (Compl. ¶ 13). The CAA thus does not extend
9 potential eligibility to Astria.
10 potential eligibility to Astria.

11 With section 320, Congress recognized that the SBA had previously excluded
12 all debtors from PPP loan guarantees and did not invalidate that rule. Rather,
13 Congress created a path for *certain* categories of debtors to be *potentially* eligible for
14 PPP loan guarantees. But, in doing so, Congress excluded traditional Chapter 11
15 debtors from potential eligibility. That exclusion is purposeful and unequivocally
16 demonstrates that Congress has no intent to mandate that traditional chapter 11
17 debtors be eligible for PPP loan guarantees. *See Barnhart v. Peabody*, 537 U.S. 149,
18 168 (2003) (explaining that “items not mentioned” in a statute are “excluded by
19 deliberate choice, not inadvertence” when the “items expressed are members of an
20 associated group or series”); *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17
21 deliberate choice, not inadvertence” when the “items expressed are members of an
22 associated group or series”); *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17
23 associated group or series”); *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17
24 associated group or series”); *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17

25 ⁵ In its Reply Brief, Astria misreads the CAA to extend potential PPP eligibility to all
26 Chapter 11 debtors. Appellees’ Reply Br. 21 (Dkt. 24). As stated above, the CAA only
27 includes the enumerated debtors, but does not extend potential eligibility to traditional
28 Chapter 11 debtors like Astria.

1 (1980) (“Where Congress explicitly enumerates certain exceptions to a general
2 prohibition, additional exceptions are not to be implied, in the absence of evidence of
3 a contrary legislative intent”). This well-accepted rule of statutory construction is
4 based upon the principle of *expressio unius est exclusio alterius*, meaning that
5 “legislative affirmative description implies denial of the nondescribed [items].”
6 *Cont’l Cas. Co. v. United States*, 314 U.S. 527, 533 (1942).
7

8
9 Further, the CAA also explicitly recognizes the SBA’s authority to determine
10 whether bankrupt entities should be eligible. The CAA establishes the SBA
11 Administrator as a gatekeeper who must first determine whether, with the discretion
12 delegated to the SBA, the listed categories of debtors will be permitted to obtain PPP
13 loan guarantees. § 320(f)(1)(A), 134 Stat. at 2016. Absent the SBA Administrator’s
14 written determination, these categories of debtors remain ineligible for the PPP
15 pursuant to the SBA’s existing rules.⁶
16
17

18 Taken together, these amendments make clear that the Bankruptcy Court erred
19 in interpreting the CARES Act to mandate chapter 11 debtor eligibility. Congress
20 plainly had no such intent because the very same Congress that passed the CARES
21

22
23 ⁶ In the SBA’s first interim final rule issued since the CAA, it continues to prohibit
24 bankrupt debtors from obtaining PPP loan guarantees. *See* Business Loan Program
25 Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act
26 26–27 (Jan. 6, 2021), <https://go.usa.gov/xAUhZ> (providing that “[t]he Borrower
27 Application Form for PPP loans (SBA Form 2483), which reflects this restriction in
28 the form of a borrower certification, is a loan program requirement” and lenders may
continue to “rely on an applicant’s representation concerning the applicant’s . . .
involvement in a bankruptcy proceeding”).

1 Act *excluded* traditional Chapter 11 debtors like Astria from potential eligibility. *See*
2 *Bell v. New Jersey*, 461 U.S. 773, 785 n.12 (1983) (“Congress is not merely
3 expressing an opinion . . . but is acting on what it understands its own prior
4 [legislative] acts to mean.”). The CAA instead confirms that Congress delegated
5 authority to the SBA to determine whether bankrupt debtors should be eligible for
6 PPP loan guarantees. The Bankruptcy Court was wrong to disregard that delegated
7 authority in favor of its view of who should be eligible for PPP loan guarantees.
8
9

10 Finally, the CAA marks the fourth time that Congress has amended the PPP.⁷
11 Each of the four amendments came after the SBA promulgated its rule excluding
12 debtors in bankruptcy from PPP loan guarantees and after bankrupt debtors brought
13 publicized challenges to that rule under the Administrative Procedure Act. In the first
14 three amendments, Congress declined the opportunity to mandate that debtors in
15 bankruptcy be eligible for PPP loan guarantees. In the CAA, Congress provided
16 potential eligibility only for three specific types of debtors, none of which include
17 traditional Chapter 11 debtors like Astria. If Congress had ever intended for Chapter
18 11 debtors to receive PPP loan guarantees, it had ample opportunity to say so. *See*
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23 ⁷ For previous amendments to the PPP, *see* Extending Authority for Commitments for
24 the Paycheck Protection Program & Separating Amounts Authorized, PUB. L. NO. 116-
25 147, 134 Stat. 660 (2020), Paycheck Program Flexibility Act of 2020, PUB. L. NO.
26 116-142, 134 Stat. 641 (2020), and Paycheck Protection Program & Health Care
27 Enhancement Act, PUB. L. NO. 116-139, 134 Stat. 620 (2020).
28

1 *United States v. Rutherford*, 442 U.S. 544, 554 n.10 (1979) (“[O]nce an agency’s
2 statutory construction has been fully brought to the attention of the public and the
3 Congress, and the latter has not sought to alter that interpretation although it has
4 amended the statute in other respects, then presumably the legislative intent has been
5 correctly discerned.”) Instead, Congress has now, in the CAA, maintained the
6 exclusion of Chapter 11 debtors. The Court should vacate the Preliminary Injunction
7 which contradicts this congressional intent.⁸
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10 **B. The CAA Amendment to 11 U.S.C. § 525 Further Demonstrates that the**
11 **Statute Does Not Apply to the PPP.**

12 In its response brief, the United States demonstrated that Astria’s cross-appeal
13 fails because 11 U.S.C. § 525 does not apply to PPP loan guarantees. Appellants’
14 Resp. & Reply Br. 13–23. Congress has now amended section 525 to specifically
15 address the CARES Act. CAA § 1001, 134 Stat. at 3216–21.⁹ But, in doing so,
16 Congress did not alter section 525 to cover the PPP, or government loan programs
17 more generally, thus further demonstrating that section 525 does not apply to the PPP.
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19

20 Generally 11 U.S.C. § 525 prohibits certain discrimination against bankrupt
21 debtors. For instance, subsection (a) prohibits a governmental unit from denying “a
22

23 ⁸ To be clear, the United States is not arguing for retroactive application of the CAA.
24 Rather, the CAA refutes the Bankruptcy Court’s mistaken conclusion that Congress,
25 in the CARES Act, intended to mandate debtor eligibility. As described above, that
26 wrong-headed interpretation is incompatible with the CAA, and thus could not have
27 been what Congress intended in the CARES Act.

28 ⁹ Excerpts containing the amendment to 11 U.S.C. § 525 are attached as Exhibit C.

1 license, permit, charter, franchise, or other similar grant” based on bankruptcy status.
2 11 U.S.C. § 525(a). Congress later amended section 525 to add subsection (c)
3 prohibiting a governmental unit from denying, in the student loan context only, “a
4 student grant, loan, loan guarantee, or loan insurance” based on bankruptcy status. 11
5 U.S.C. § 525(c); *see also* Appellants’ Resp. & Reply Br. 14.

7 In Division FF, Title X of the CAA, entitled “BANKRUPTCY RELIEF,”
8 Congress amended 11 U.S.C. § 525 by adding a new subsection (d) providing that “[a]
9 person may not be denied relief under sections 4022 through 4024 of the CARES Act
10 (15 U.S.C. §§ 9056, 9057, 9058) because the person is or has been a debtor under this
11 title.” CAA § 1001(c). 134 Stat. at 3217. Sections 4022 through 4024 of the CARES
12 Act allow certain borrowers of federally-backed multifamily mortgage loans to
13 request a period of forbearance. *Id.* In again amending section 525, Congress neither
14 added loans to the enumerated items in 11 U.S.C. § 525(a) nor broadened 11 U.S.C. §
15 525(c) to include loans outside the student variety. Had Congress intended for section
16 525 to apply to PPP loan guarantees, it could have further amended the statute
17 expressly in the CAA, as it did with respect to the CARES Act mortgage protections,
18 or as it had done previously for student loans. *See, e.g., Cent. Bank of Denver, N.A. v.*
19 *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 176 (1994) (“Congress knew how
20 to impose [certain] liability when it chose to do so.”); *Blue Chip Stamps v. Manor*
21 *Drug Stores*, 421 U.S. 723, 734 (1975) (“When Congress wished to provide a remedy
22 . . . it had little trouble in doing so expressly.”). Congress did not do so. That decision

1 not to amend section 525 in the CAA confirms that the SBA’s denial of a PPP loan
2 guarantee to a debtor in bankruptcy does not violate section 525(a).

3 **II. THE ELEVENTH CIRCUIT’S *GATEWAY* DECISION SHOULD BE FOLLOWED**
4 **HERE.**

5 In its prior briefing, the United States demonstrated that the SBA’s rationale for
6 the bankruptcy exclusion can reasonably be discerned from its interim final rules.
7 Appellants’ Br. 29–31. Those interim final rules demonstrate that the bankruptcy
8 exclusion is a rational accommodation of factors Congress intended the SBA to
9 consider—namely, the obligation to quickly extend millions of loan guarantees to
10 small businesses across the country to meet the exigent need for funds, the concern
11 that PPP loans not be diverted to improper uses, and the SBA’s statutory obligation to
12 ensure its loans are of “sound value.” Appellants’ Br. 29–35; Appellants’ Resp. &
13 Reply Br. 1–2, 29–35. The law requires no more, especially under the extreme
14 circumstances presented, where Congress required the SBA to stand-up a multi-
15 hundred-billion dollar loan program in a matter of days. For these reasons, the great
16 majority of courts have denied challenges to the SBA’s bankruptcy exclusion rule. *See*
17 Appellants’ Br. 14–15 (collecting cases denying relief). But, until recently, no circuit
18 court of appeals had yet addressed the bankruptcy exclusion. The Eleventh Circuit has
19 now ruled on the legal issues presented here. *Gateway*, 2020 WL 7579338.

20 In *Gateway*, the debtor filed an adversary proceeding against the SBA, seeking
21 declaratory and injunctive relief based, in part, on the very same arbitrary-or-
22

1 capricious claim at issue in this appeal. 2020 WL 7579338, at *5. The bankruptcy
2 court in *Gateway* concluded that the SBA’s bankruptcy exclusion was unlawful under
3 the APA and enjoined the SBA. *Id.* On appeal, the Eleventh Circuit vacated the
4 bankruptcy court’s preliminary injunction, holding that the SBA’s bankruptcy
5 exclusion was reasonable and fully compliant with APA requirements. *Id.* at *8–16. In
6 doing so, the Eleventh Circuit made several legal conclusions that directly contradict
7 the Bankruptcy Court’s Preliminary Injunction.
8
9

10 First, the Eleventh Circuit held that the SBA’s bankruptcy exclusion was not
11 arbitrary or capricious. *Id.* at *15–16. Acknowledging the “far more limited
12 administrative record than we might otherwise have had” because “Congress did away
13 with the notice and comment period by ordering the SBA to issue regulations in . . .
14 barely more than two weeks,” the court relied upon the “SBA’s contemporaneous
15 explanation” for the bankruptcy exclusion set forth in its interim final rules. *Id.* at *15.
16 Based upon the interim final rules, the court concluded “that [the SBA] fashioned its
17 consideration of bankruptcy status into a streamlined and bright-line rule that would
18 speed up decisions about whether PPP loans should be made [to debtors in
19 bankruptcy]” and was “not implausible, irrational, or the product of arbitrary and
20 capricious decision making.” *Id.* at *16. In so holding, the Eleventh Circuit refused to
21 “substitute [its] view for the SBA’s judgment” and disagreed with the bankruptcy
22 court’s conclusion that the SBA acted arbitrarily or capriciously by failing to consider
23 the Chapter 11 bankruptcy process. *Id.* As the Eleventh Circuit explained,
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1 “[b]ankruptcy debtors are financially distressed and have competing creditors, which
2 it is not implausible to believe will increase the risk of unauthorized use of funds and
3 non-repayment”. *Id.*

4
5 Second, the Eleventh Circuit held that the APA claims were non-core
6 proceedings for which “bankruptcy courts generally cannot enter a final order.” *Id.* at
7 *6–8.

8
9 Third, the Eleventh Circuit recognized that injunction against the SBA “may be
10 barred by sovereign immunity” pursuant to 15 U.S.C. § 634(b)(1), but did not reach
11 the issue because it held for the SBA on the merits. *Id.* at *8 n.7.

12
13 And fourth, despite not having an 11 U.S.C. § 525(a) claim before it, the
14 Eleventh Circuit addressed the plaintiff’s assertion that the “PPP functions more like a
15 grant than a loan because PPP loans are designed to be forgiven.” *Id.* at *13. The court
16 rejected that argument, concluding that “[l]imiting loan forgiveness, putting the PPP
17 into [the SBA’s Section] 7(a) [loan program], and maintaining § 7(a)’s sound value
18 requirement, all show some concern about loan repayment.” *Id.*

19
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21 Astria argues that *Gateway* may be distinguished. Appellees’ Reply Br. 16. But
22 there is no relevant basis to distinguish the case.¹⁰ Astria raises the same arbitrary-or-

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24
25 ¹⁰Astria contends that the timing of its application distinguishes this case from
26 *Gateway*, arguing that the Fourth Interim Rule may be ignored here because it was
27 issued after Astria submitted its PPP application. Appellees’ Reply Br. 16. This
28 contention is incorrect. First, Astria’s assertion misconstrues the facts. Astria applied
for PPP loans from the second tranche of funding shortly before that tranche was
opened, just like the debtor in *Gateway*. See Appellants’ Br. 7; Appellees’ Br. 15 (Dkt.

capricious claim as addressed in *Gateway*, relying on the same administrative record. The core-jurisdiction and sovereign immunity issues are also identical for each case. Each of these issues present pure questions of law that are the same for this Court as in *Gateway*. The Bankruptcy Court’s conclusions on these issues cannot be reconciled with the Eleventh Circuit’s ruling in *Gateway*. The Eleventh Circuit’s decision is the better reasoned approach and should be followed by this Court.¹¹

III. RECENT BANKRUPTCY COURT PROCEEDINGS FULLY ACCOUNT FOR THE PENDING APPEAL.

To demonstrate equitable mootness, Astria bears the “heavy burden” of demonstrating that the Court on appeal cannot “provide any effective relief without

14); *Gateway*, 2020 WL 7579338 at *4. And the Fourth Interim Rule was issued concurrent with that second round of funding. *See* Appellants’ Br. 7, 8; Appellees’ Br. 4, 16. Second, the bankruptcy exclusion applied from the very outset of the PPP. It was included on the original PPP application form, which was itself incorporated in the SBA’s First Interim Final Rule. *See* Appellants’ Br. 8; *Gateway*, 2020 WL 7579338 at *3. The Fourth Interim Rule did not impose any new requirements for bankrupt entities, but merely clarified the scope of the existing exclusion and described SBA’s reasoning for the rule. *See* Appellants’ Br. 8–9; *Gateway*, 2020 WL 7579338 at *4.

¹¹ After the Court granted leave for this Surreply, the bankruptcy court in *Penobscot Valley Hosp. v. Carranza (In re Penobscot)*, Adv. No. 20-1005 (Bankr. D. Me Jan. 12, 2021) issued a detailed opinion with proposed conclusions of law that the SBA did not violate the APA. The United States’ prior briefing in this case cited the district court opinion from *Penobscot*, which ruled in SBA’s favor in part, and remanded in part to consider the arbitrary-or-capricious claim, *inter alia*. *See* Appellants’ Resp. & Reply Br 17. The bankruptcy courts’ recommendation contains a thorough analysis concluding that the SBA’s bankruptcy exclusion was not arbitrary or capricious, in accord with *Gateway*. A copy of the *Penobscot* recommendation is attached as Exhibit D.

1 completely knocking the props out from under the plan.” Appellants’ Resp. & Reply
2 Br. 10 (quoting *Motor Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe*
3 *Insulation Co.)*, 677 F.3d 869, 880 (9th Cir. 2012)). The Bankruptcy Court confirmed
4 a chapter 11 plan in the bankruptcy case on December 23, 2020. But rather than
5 setting up the appeal to “knock[] the props out” from the plan, the Confirmation Order
6 fully acknowledges and accounts for this appeal.
7

8
9 The Preliminary Injunction held that the SBA could not exclude Astria as
10 ineligible based on its status as a bankrupt debtor. Further, as described in the United
11 States’ prior briefing, the Preliminary Injunction continues to constrain the SBA by
12 prohibiting it from considering Astria’s bankruptcy status on any additional forms,
13 including the forgiveness application. *See* Appellants’ Resp. & Reply Br. 12–13.
14 Reversing the Preliminary Injunction will allow the SBA to apply its bankruptcy
15 exclusion rule to determine that Astria was ineligible at the time it received its PPP
16 loans, and then deny forgiveness based on Astria’s ineligibility. *See* First Loan
17 Forgiveness Rule, 85 Fed. Reg. 33,004, 33,005 (June 1, 2020) (“If SBA determines . .
18 . that the borrower was ineligible for the PPP loan based on the provisions of the
19 CARES Act, SBA rules or guidance available at the time of the borrower's loan
20 application, . . . the loan will not be eligible for loan forgiveness.”);¹² PPP Forgiveness
21
22
23
24

25
26 ¹² SBA is not asking this Court to determine loan forgiveness, contrary to Astria’s
27 assertion. *See* Appellees’ Reply Br. 3 n.4. The SBA retains full authority to determine
28 loan forgiveness. *See* First Loan Review Rule, 85 Fed. Reg. at 33,012 (describing
forgiveness procedures). The SBA merely asks this Court to reverse the Preliminary

1 Application (Dec. 31, 2020) (“SBA may direct a lender to disapprove the Borrower’s
2 loan forgiveness application if SBA determines that the Borrower was ineligible for
3 the PPP loan.”);¹³ *accord* First Loan Review Rule, 85 Fed. Reg. 33,010, 33,012 (June
4 1, 2020). Astria would then remain liable to pay its PPP loans. And enforcing that
5 liability will provide effective relief to the SBA without “knocking the props out from
6 under the plan.” *In re Thorpe*, 677 F.3d at 881. Rather, the Confirmation Order
7 specifically accounts for the SBA’s relief, stating “[i]f the PPP Loans are later not
8 forgiven and become due after the Effective Date, the Debtors will agree to make
9 payments to the Lender on the PPP Loans over time in the ordinary course of
10 business.” Confirmation Order at 63. The ability to provide relief to the SBA
11 consistent with the confirmed plan, by itself, defeats equitable mootness. *See In re*
12 *Thorpe*, 677 F.3d at 881 (“If [appellants] have presented appellate claims that can be
13 remedied by some reasonable means without totally dislodging the . . . plan, it would
14 be inequitable to dismiss their appeal on equitable mootness grounds.”).

19 CONCLUSION

20 For the foregoing reasons, along with those stated in the United States’ opening
21 brief, and its brief in reply and response to the cross-appeal, this Court should vacate
22 the Bankruptcy Court’s preliminary injunction.
23

24
25 _____
26 Injunction so that the SBA may exercise its authority over loan forgiveness as
27 Congress permitted.

28 ¹³ The PPP Forgiveness Application is attached as Exhibit E.

January 19, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Fed. R. Bankr. R. 8016(d)(2)(C) because, excluding the parts of the document exempted by the Rule 8015(g), this document contains 4,322 words.

January 19, 2021

/s/ Kevin P. VanLandingham
KEVIN P. VANLANDINGHAM
Commercial Litigation Branch
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United States Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2021, I electronically filed the United States' APPELLANTS' SURREPLY BRIEF 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.

/s/ Kevin P. VanLandingham
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EXHIBIT A



Whitman L. Holt
Bankruptcy Judge

Dated: December 23rd, 2020

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

IN RE:

ASTRIA HEALTH, et al.
Debtors.¹

Lead Case No. 19-01189-11

Jointly Administered

**ORDER CONFIRMING MODIFIED
SECOND AMENDED JOINT
CHAPTER 11 PLAN OF
REORGANIZATION OF ASTRIA
HEALTH AND ITS DEBTOR
AFFILIATES**

[RELATED DOCKET NO. 1986, 2196]

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 (19-19-01200-11).

Confirmation Order

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4

1 Astria Health, a Washington nonprofit public benefit corporation (“**Astria**”),
 2 and the above-referenced affiliated debtors and debtors in possession (collectively,
 3 the “**Debtors**”), in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”)
 4 and Lapis Advisers, LP as lender under the debtor in possession facility in the
 5 Chapter 11 Cases, agent under the Debtors’ prepetition credit agreement, and as
 6 investment advisor and investment manager for certain funds which are beneficial
 7 holders of those certain Washington Health Care Facilities Authority Revenue
 8 Bonds, Series 2017a Bonds and the Series 2017b Bonds (collectively the “**Lapis**
 9 **Parties**” and, together with the Debtors, the “**Plan Proponents**”), having proposed
 10 the *Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and*
 11 *Its Debtor Affiliates* [Docket No. 1986] (the “**Second Amended Plan**”) and the
 12 *Modified Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health*
 13 *and Its Debtor Affiliates* [Docket No. 2196] (the “**Modified Second Amended**
 14 **Plan**,” together with the Second Amended Plan, the “**Plan**”);² the Court having
 15 conducted hearings to consider confirmation of the Plan (“**Confirmation**”) on
 16 December 18, 21 and 23, 2020 (the “**Confirmation Hearing**”); the Court having
 17 considered: (i)(a) the *Certificate of Service of Leanne V. Rehder re: Solicitation*
 18 *Materials Served on November 14, 2020* [Docket No. 2012] (the “**KCC Certificate**”
 19

20 ² All capitalized terms used but not defined herein have the meanings given to them
 21 in the Plan.

1 **of Service**"); (b) the *Supplemental Certificate of Service of Heather Fellows re:*
2 *Solicitation Materials Served on or Before December 3, 2020* [Docket No. 2090]
3 (together with Docket No. 2012, the **"KCC Certificates of Service"**"); (c) the
4 *Certification of Leanne V. Rehder Scott with Respect to the Tabulation of Votes on*
5 *the Second Amended Joint Chapter 11 Plan of Astria Health and Its Debtor Affiliates*
6 [Docket No. 2121] (the **"Voting Declaration"**"); (d) the *Certificate of Publication of*
7 *the Notice of (I) Approval of the Disclosure Statement, (II) Deadline for Voting on*
8 *the Plan, (III) Hearing to Consider Confirmation of the Plan, and (IV) Deadline for*
9 *Filing Objections to Confirmation of the Plan in USA Today* [Docket No. 2026]; and
10 (e) the *Certificate of Publication of the Notice of (I) Approval of the Disclosure*
11 *Statement, (II) Deadline for Voting on the Plan, (III) Hearing to Consider*
12 *Confirmation of the Plan, and (IV) Deadline for Filing Objections to Confirmation*
13 *of the Plan in Yakima Herald Republic, Inc.* [Docket No. 2027] (together with Docket
14 No. 2026, the **"KCC Certificates of Publication"**), each admitted into evidence at
15 the Confirmation Hearing; (ii) the arguments of counsel presented at the
16 Confirmation Hearing; (iii) the *Memorandum of Law in Support of Confirmation of*
17 *Second Amended Joint Chapter 11 Plan and Response to Objections* (the
18 **"Confirmation Brief"**) [Docket No. 2124]; (iv) the additional responses and
19 supplements filed in support of the Plan and Confirmation Brief [Docket Nos. 2003,
20 2007, 2043, 2082, 2190]; and (v) the objections [Docket Nos. 2065, 2066, 2068,
21 2077, 2079, 2125, 2144] (the **"Objections"**) to the Plan, and any withdrawals or

1 settlements thereof; and the Court having taken judicial notice of the entire docket of
 2 the Debtors' Chapter 11 Cases maintained by the Clerk of the Court and/or its duly
 3 appointed agent, and all pleadings and other documents filed, all orders entered, and
 4 evidence and arguments made, proffered, or adduced at the hearings held before the
 5 Court during the pendency of the Chapter 11 Cases; and the Court having found that
 6 due and proper notice has been given with respect to the Confirmation Hearing and
 7 the deadlines and procedures for filing objections to the Plan; and the Court having
 8 heard the statements and arguments made by counsel in respect of Confirmation of
 9 the Plan, and all objections to Confirmation (including, without limitation, any of the
 10 settlements to be approved pursuant to the Plan) having been withdrawn, resolved as
 11 stated on the record or overruled; and the appearance of all interested parties having
 12 been duly noted in the record of the Confirmation Hearing; and upon the record of
 13 the Confirmation Hearing, and after due deliberation thereon, and sufficient cause
 14 appearing therefor;

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16 IT IS HEREBY FOUND AND CONCLUDED, that:³

17 _____
 18 ³ The findings of fact and conclusions of law set forth herein shall constitute findings
 19 of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable
 20 to this proceeding by Bankruptcy Rule 9014. To the extent any of the orders of this
 21 Bankruptcy Court constitute findings of fact or conclusions of law, they are adopted

JURISDICTION AND VENUE

A. The Court has jurisdiction over this matter and these Chapter 11 Cases pursuant to 28 U.S.C. § 1334.

B. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), this Court has jurisdiction to enter a final order with respect thereto, and this Court's exercise of such jurisdiction is constitutional in all respects. The Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* as amended (the "**Bankruptcy Code**"),⁴ and should be confirmed.

C. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The Debtors are proper Debtors under § 109, and the Plan Proponents are proper proponents of the Plan under § 1121(a).

_____ as such. To the extent any of the findings of fact or conclusions of law constitute an order of this Bankruptcy Court, they are adopted as such.

⁴ All references to "§" are to sections of the Bankruptcy Code; all references to "**Bankruptcy Rules**" are to provisions of the Federal Rules of Bankruptcy Practice; all references to "**LBR**" are to provisions of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Washington.

COMPLIANCE WITH BANKRUPTCY RULE 3016 and LBR 3017-1

E. The Plan is dated and identifies the entities submitting and filing it, thereby complying with Bankruptcy Rule 3016(a). Section 1.39 of the Plan expressly defines “Consummation” as “the occurrence of the Effective Date,” and Section III.BB expressly lists the conditions to occurrence of the Effective Date, thereby complying with LBR 3017-1(d)(1). The filing of the Disclosure Statement complied with Bankruptcy Rule 3016(b) and LBR 3017-1(a).

PROPER NOTICE

F. As described below and as evidenced by the KCC Certificates of Service and KCC Certificates of Publication, due, adequate and sufficient notice of the Disclosure Statement, the Plan, the Plan Supplement, and the Confirmation Hearing, together with all deadlines for voting on or objecting to the Plan and with respect to confirmation was given in compliance with applicable law, including, without limitation, the Bankruptcy Rules, and no other or further notice is or shall be required.

**STANDARDS FOR CONFIRMATION UNDER § 1129 OF THE
BANKRUPTCY CODE**

G. The Plan Proponents have met their burden of proving the elements of §§ 1129(a) and 1129(b) by a preponderance of the evidence, which is the applicable evidentiary standard for confirmation of the Plan. Further, the Plan Proponents have proven the elements of §§ 1129(a) and 1129(b) by clear and convincing evidence.

1 The evidentiary record of the Confirmation Hearing supports the findings of fact and
2 conclusions of law set forth in the following paragraphs.

3 H. § 1129(a)(1). The Plan complies with each applicable provision of the
4 Bankruptcy Code. Pursuant to §§ 1122(a) and 1123(a)(1), Section II of the Plan
5 provides for the separate classification of Claims into eight Classes or Sub Classes,
6 based on reasonable and appropriate differences in the legal nature or priority of such
7 Claims (other than Administrative Claims, Priority Tax Claims, Professional Fee
8 Claims, and DIP Claims, which are addressed in Section II.D of the Plan and which
9 are not required to be designated as separate Classes pursuant to § 1123(a)(1)). In
10 particular, the Plan complies with the requirements of §§ 1122 and 1123 as follows:

11 1. In accordance with § 1122(a), Section II of the Plan classifies
12 each Claim against the Debtors into a Class containing only
substantially similar Claims;

13 2. In accordance with § 1123(a)(1), Section II of the Plan properly
14 classifies all Claims that require classification. Separate classification
15 was not done for any improper purpose and does not unfairly
discriminate between or among holders of Claims;

16 3. In accordance with § 1123(a)(2), Section II of the Plan properly
17 identifies and describes each Class of Claims that is not Impaired under
the Plan;

18 4. In accordance with § 1123(a)(3), Section II of the Plan properly
19 identifies and describes the treatment of each Class of Claims that is
Impaired under the Plan;

1 5. In accordance with § 1123(a)(4), the Plan provides the same
2 treatment for each Claim within a particular Class unless the holder of
3 such a Claim has agreed to less favorable treatment;

4 6. In accordance with § 1123(a)(5), the Plan, including the Plan
5 Supplement, provides, in detail, adequate and proper means for its
6 implementation;

7 7. In accordance with § 1123(a)(6), i.e., that, if a debtor is a
8 corporation, its plan must prohibit the issuance of nonvoting equity
9 securities, the Debtors, as nonprofit entities, will not issue any stock or
10 other securities under the Plan and therefore the Plan comports with §
11 1123(a)(6);

12 8. In accordance with § 1123(a)(7), the provisions of the Plan
13 regarding the manner of selection of directors of Reorganized Debtors
14 are consistent with the interests of creditors and equity security holders
15 (of which there are none) and with public policy;

16 9. In accordance with § 1123(b)(1), Section II of the Plan impairs or
17 leaves unimpaired, as the case may be, each Class of Claims;

18 10. In accordance with § 1123(b)(2), Section IV.B of the Plan
19 provides for the rejection of the executory contracts and unexpired
20 leases of the Debtors that have not been identified on the Schedule of
21 Assumed Agreements, previously assumed, assumed and assigned, or
22 rejected pursuant to § 365 and orders of the Court;

23 11. In accordance with §§ 363 and 1123(b)(3) and Bankruptcy Rule
24 9019 and LBR 9019-1, Section VII.B of the Plan provides for the good
25 faith compromise and settlement of all Claims, Interests, and
26 controversies relating to the contractual, legal, and subordination rights
27 that a holder of any Claim may have with respect to any Allowed Claim
28 or any distribution to be made on account of such an Allowed Claim,
29 including, but not limited to, approval of the Senior Debt 9019
30 Settlement and the Committee Plan Settlement as set forth in Section III
31 of the Plan. The Plan further provides, in accordance with § 1123(b)(3),
32 that the Reorganized Debtors, the GUC Distribution Trust, and/or the

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Liquidating Trust, as applicable, will retain and may directly or through the Liquidating Trustee enforce any claims, demands, rights, defenses and Causes of Action that any Debtors may hold against any entity, to the extent not expressly released under the Plan;

12. In accordance with § 1123(b)(5), Section II of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of Claims in Classes 1 through 4A;

13. In accordance with § 1123(b)(6), the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code; and

14. In accordance with § 1123(d), Section IV.A of the Plan provides for the satisfaction of cure amounts associated with each Executory Agreement to be assumed pursuant to the Plan in accordance with § 365(b)(1). All cure amounts will be determined in accordance with the underlying agreements and applicable law.

I. **§ 1129(a)(2)**. The Plan Proponents have complied with all applicable provisions of the Bankruptcy Code as required by § 1129(a)(2), including §§ 1122, 1123, 1124, 1125, 1126, 1127, and 1128, Bankruptcy Rules 3017, 3018, and 3019, and LBR 3017-1 and 3018-1, and all other applicable rules, laws and regulations with respect to the Plan and the solicitation of acceptances or rejections thereof. In particular, acceptances or rejections of the Plan were solicited in good faith and in compliance with the requirements of §§ 1125 and 1126 as follows:

1. In compliance with the *Order Granting Joint Motion for an Order Approving (I) Disclosure Statement; (II) Solicitation and Voting Procedures; (III) Notice Procedures; (IV) Notice and Objection Procedures for Confirmation of Joint Plan of Reorganization; and (V) Granting Related Relief* entered on November 12, 2020 [Docket No. 1991] (the “**Disclosure Statement Order**”), on November 14, 2020, the

Plan Proponents, through their claims and noticing agent, Kurtzman Carson Consultants LLC (“KCC”), caused copies of the following materials to be served on all holders of Claims in Classes that were entitled to vote to accept or reject the Plan (i.e., Claims in Classes 2A through 4A); *see* KCC Certificate of Service, at ¶¶ 5-10; Voting Declaration, at ¶ 6:

- a written notice (the “**Confirmation Hearing Notice**”) of (a) the Court’s approval of the Disclosure Statement, (b) the voting deadline, (c) the date and time of the Confirmation Hearing, and (d) the Confirmation objection deadline and procedures;
- the Disclosure Statement (together with the exhibits thereto, including the Plan and the Disclosure Statement Order) in electronic format; and
- the appropriate form of Ballot with a postage prepaid return envelope.

2. In compliance with the Disclosure Statement Order, on November 14, 2020, the Plan Proponents, through KCC, caused a copy of the notice of non-voting status to be served on all holders of Claims and Interests in the non-voting classes (i.e., Class 1) or otherwise unclassified. *See* KCC Certificate of Service, at ¶ 1; Voting Declaration, at ¶ 6.

3. In compliance with the Disclosure Statement Order, on November 14, 2020, the Plan Proponents, through KCC, caused a copy of the Confirmation Hearing Notice to be served on all parties in the creditor database maintained by KCC not otherwise served pursuant to paragraphs 1 and 2 above, including, but not limited to, (a) all non-Debtor parties to Executory Contracts, and (b) all holders of Administrative Claims and Priority Tax Claims. *See* Voting Declaration at ¶ 6.

4. In compliance with the Disclosure Statement Order, on November 14, 2020, the Plan Proponents, through KCC, caused copies of the Disclosure Statement (together with the exhibits thereto,

including the Plan and the Disclosure Statement Order) and the Confirmation Hearing Notice, to be served on the parties who have requested notice of pleadings in this case. *See* KCC Certificate of Service Affidavit, at ¶¶ 11-12.

5. On the dates indicated below, the Plan Proponents filed (and made available on the Debtors' restructuring website at <http://www.kccllc.net/AstriaHealth>) the following Plan Supplement documents:

- (a) the Schedule of Assumed Agreements, filed on November 25, 2020 [Docket No. 2043], as amended on December 4, 2020 [Docket No. 2082];
- (b) the Schedule of Insurance Policies, filed on November 25, 2020 [Docket No. 2043];
- (c) the List of directors for Reorganized Debtors, filed on November 25, 2020 [Docket No. 2043];
- (d) Exchange Debt Documents, filed on November 25, 2020 [Docket No. 2043];
- (e) the GUC Distribution Trust Agreement, filed on November 25, 2020 [Docket No. 2043];
- (f) the Liquidation Trust Agreement, filed on November 25, 2020 [Docket No. 2043];
- (g) the Term Sheet, filed on November 25, 2020 [Docket No. 2043];
- (h) the D&O Cause of Action Agreement, filed on November 25, 2020 [Docket No. 2043];

- (i) Revised Financial Projections, filed on November 25, 2020 [Docket No. 2043];
- (j) Multicare Credit Agreement, filed on December 22, 2020 [Docket No. 2197]; and
- (k) Exit Loan Escrow Agreement, filed on December 22, 2020 [Docket No. 2197].

6. Section III.J of the Plan provides that the Reorganized Debtors will provide management for the Hospitals after the Effective Date. Unless the Multicare Transaction Payment has been funded and irrevocably released to the Lapis Parties on or before the Effective Date, AH Systems shall serve as the sole member of the Reorganized Debtors. It is expected that all AHM employees currently serving as officers or employees of the Debtors will be offered employment by the Reorganized Debtors. Further, the Debtors filed a Plan Supplement which identified the new directors for the Reorganized Debtors [Docket No. 2043, Exhibit C]. Accordingly, the Plan satisfies the requirements of § 1129(a)(5).

7. The Confirmation Hearing Notice provided due and proper notice of the Confirmation Hearing and all relevant dates, deadlines, procedures and other information relating to the Plan and/or the solicitation of votes thereon, including, without limitation, the voting deadline, the objection deadline, the time, date and place of the Confirmation Hearing and the release provisions in the Plan.

8. All persons entitled to receive notice of the Disclosure Statement, the Plan, and the Confirmation Hearing have received proper, timely and adequate notice in accordance with the Disclosure Statement Order, applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and LBR, and have had an opportunity to appear and be heard with respect thereto.

9. The Plan Proponents solicited votes with respect to the Plan in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order. Accordingly,

1 the Plan Proponents are entitled to the protections afforded by § 1125(e)
2 and the exculpation provisions set forth in Section VII.E of the Plan.

3 10. Claims in Class 1 under the Plan are unimpaired, and such Class
4 is deemed to have accepted the Plan pursuant to § 1126(f).

5 11. The Plan Proponents solicited votes on the Plan by all Classes of
6 Impaired Claims that were entitled to vote pursuant to the Bankruptcy
7 Code, the Bankruptcy Rules, and the Disclosure Statement Order (i.e.,
8 Classes 2A through 4A). *See* Voting Declaration, at ¶ 11 and Exhibit A
9 thereto. The Plan was voted on by all but one Class of Impaired Claims
10 that was entitled to vote, none of whose members submitted a completed
11 Ballot (Class 4A). *Id.*

12 12. KCC has made a final determination of the validity of, and
13 tabulation with respect to, all acceptances and rejections of the Plan by
14 holders of Claims entitled to vote on the Plan, including the amount and
15 number of accepting and rejecting Claims in Classes 2A through 4A
16 under the Plan. *See* Voting Declaration, at ¶ 11 and Exhibit A thereto.

17 13. Each of Classes 2A, 2B, 2C, 3, and 4 has accepted the Plan
18 because holders of Claims in such Classes of at least two-thirds in
19 amount and a majority in number of the Claims in such Classes actually
20 voted to accept the Plan. *See* Voting Declaration, at ¶ 12 and Exhibit A
21 thereto. No holders of any Claim in Class 4A submitted a vote to accept
or reject the Plan. *Id.*

J. **Section 1129(a)(3).** The Plan has been proposed in good faith and not
by any means forbidden by law. The Chapter 11 Cases were filed in good faith and
consistent with the purposes of the Bankruptcy Code. The Plan fairly achieves a
result consistent with the objectives and purposes of the Bankruptcy Code. In so
finding, the Court has considered the totality of the circumstances in these Chapter
11 Cases. The Plan is the result of extensive good-faith, arms' length negotiations

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1 by and among the Plan Proponents and certain of their principal constituencies, and
 2 their respective representatives, and reflects substantial input from the principal
 3 constituencies having an interest in the Chapter 11 Cases and, as evidenced by the
 4 overwhelming acceptance of the Plan, achieves the goal of a consensual chapter 11
 5 plan pursuant to the requirements of the Bankruptcy Code. The Plan Proponents and
 6 each of their respective officers, directors, employees, advisors, and professionals (i)
 7 acted in good faith in negotiating, formulating, and proposing, where applicable, the
 8 Plan and agreements, compromises, settlements, transactions, and transfers
 9 contemplated thereby, and (ii) will be acting in good faith in proceeding to (a)
 10 consummate the Plan and the agreements, compromises, settlements, transactions,
 11 transfers, and documentation contemplated by the Plan, including, but not limited to,
 12 the Plan Supplement documents, and (b) take any actions authorized and directed or
 13 contemplated by this Order. Thus, the Plan satisfies the requirements of § 1129(a)(3).

14 K. § 1129(a)(4). The Plan provides that Professional Fee Claims submitted
 15 by professionals for services incurred prior to the Effective Date will be entitled to
 16 payment only if they are approved by, or are subject to the approval of, the
 17 Bankruptcy Court as reasonable, thereby satisfying the requirements of § 1129(a)(4).

18 L. § 1129(a)(5). The Plan Proponents have disclosed the identities of the
 19 directors of the new directors for the Reorganized Directors. [See Docket No. 2043,
 20 Exhibit C]. The Plan Proponents have therefore satisfied the requirements of §
 21 1129(a)(5).

Confirmation Order

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1 M. § 1129(a)(6). The Plan does not provide for any changes in rates that
 2 require regulatory approval of any governmental agency and therefore, the
 3 requirements of § 1129(a)(6) are inapplicable to confirmation of the Plan.

4 N. § 1129(a)(7). The liquidation analysis set forth in Exhibit A to the
 5 Disclosure Statement and other evidence proffered or adduced at or prior to the
 6 Confirmation Hearing, or in the Lane Declaration in connection with the
 7 Confirmation Hearing: (a) are reasonable, persuasive, accurate and credible; (b)
 8 utilize reasonable and appropriate methodologies and assumptions; (c) have not been
 9 controverted by any other evidence; and (d) establish that each holder of a Claim in
 10 an Impaired Class either (i) has accepted the Plan, or (ii) will receive or retain under
 11 the Plan, on account of such Claim property of a value, as of the Effective Date of
 12 the Plan, that is not less than the amount that it would receive if the Debtors were
 13 liquidated under Chapter 7 of the Bankruptcy Code on such date.

14 O. § 1129(a)(9). The Plan provides treatment for Administrative Claims,
 15 Priority Tax Claims, and Priority Claims that is consistent with the requirements of
 16 § 1129(a)(9).

17 P. § 1129(a)(10). The Plan has been accepted by all classes of Impaired
 18 Claims that are entitled to vote on the Plan other than Class 4A (*i.e.*, Classes 2A
 19 through 4), determined without including any acceptance of the Plan by any
 20 “insider.” *See* Voting Declaration, Exhibit A.

1 Q. § 1129(a)(11). The Plan is feasible, within the meaning of §
 2 1129(a)(11). The projections of the liquidity and financial information, including,
 3 without limitation, the projections of the Debtors as of the Effective Date, are
 4 reasonable and made in good faith. The evidence provided in support of the Plan or
 5 adduced by the Debtors or other Plan Proponents at, or before, the Confirmation
 6 Hearing or in the Lane Declaration: (a) is reasonable, persuasive, credible and
 7 accurate as of the dates such analysis or evidence was prepared, presented or
 8 proffered; (b) utilizes reasonable and appropriate methodologies and assumptions;
 9 and (c) has not been controverted by any other admissible evidence. The Plan
 10 Proponents have demonstrated a reasonable assurance of the Plan's prospects for
 11 success.

12 R. § 1129(a)(12). The Plan provides that fees payable pursuant to 28
 13 U.S.C. § 1930 will be paid by the Debtors on or before Confirmation. After
 14 Confirmation, all fees payable pursuant to 28 U.S.C. § 1930 will be paid by the
 15 Liquidation Trust until entry of a final decree, or entry of an order of dismissal or
 16 conversion to chapter 7. If the Liquidation Trust fails to timely pay the quarterly fees
 17 that come due after Confirmation, the Reorganized Debtors shall remain obligated to
 18 pay the fees and may seek indemnification from the Liquidation Trust.

19 S. § 1129(a)(13). The Debtors are not obligated to pay any retiree benefits
 20 pursuant to § 1114, and therefore, the requirements of § 1129(a)(13) are inapplicable
 21 to confirmation of the Plan.

1 T. §§ 1129(a)(14) and (15). The Debtors do not owe any domestic support
 2 obligations and are not individuals. Therefore, the requirements of §§ 1129(a)(14)
 3 and 1129(a)(15) are inapplicable to confirmation of the Plan.

4 U. § 1129(a)(16). The Plan satisfies § 1129(a)(16) and any applicable non-
 5 bankruptcy law that governs transfers of property under a plan to be made by a
 6 nonprofit entity. Section 1129(a)(16) does not require the Bankruptcy Court to
 7 remand or refer any proceeding, issue, or controversy to any court other than the
 8 Bankruptcy Court or to require the approval of any court (including, without
 9 limitation, any Washington court under the Nonprofit Laws) other than the
 10 Bankruptcy Court for any prior, current, or future transfer of property. Therefore,
 11 because the Plan contains the Bankruptcy Court's approval of any prior, current, or
 12 future property transfers, the Plan satisfies the requirements of § 1129(a)(16).

13 V. § 1129(b). The Plan does not satisfy § 1129(a)(8) because Class 4A
 14 members did not submit any ballots and, thus, are deemed to have rejected the Plan.
 15 However, the Debtors are non-profit corporations, the Plan's treatment of Class 4A
 16 is fair and equitable and does not unfairly discriminate against the class of claims,
 17 and there is no class of claims junior to Class 4A that will receive any distribution
 18 under the Plan. Accordingly, the Plan satisfies the requirements of § 1129(b).

19 W. § 1129(c). The Plan (including previous versions thereof) is the only
 20 plan that has been filed in these Chapter 11 Cases that has been found to satisfy the
 21

1 requirements of subsection (a) of § 1129. Accordingly, confirmation of the Plan
2 complies with the requirements of § 1129(c).

3 X. **§ 1129(d)**. No party in interest has requested that the Court deny
4 Confirmation of the Plan on grounds that the principal purpose of the Plan is the
5 avoidance of taxes or the avoidance of the application of § 5 of the Securities Act,
6 and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan
7 satisfies the requirements of § 1129(d).

8 Y. **§ 1129(e)**. None of these Chapter 11 Cases is a small business case
9 within the meaning of the Bankruptcy Code.

10 Z. Based upon the foregoing and all other pleadings and evidence proffered
11 or adduced at or prior to the Confirmation Hearing, the Plan and the Plan Proponents
12 satisfy the requirements for confirmation set forth in § 1129 and the LBR.

13 **MODIFICATIONS TO THE PLAN**

14 AA. The modifications and clarifications included in the Modified Second
15 Amended Plan (the “**Non-Material Modifications**”), only affect the treatment of the
16 Claims held by the Lapis Parties, which accepted the Plan. The Non-Material
17 Modifications do not materially or adversely affect the treatment of any Class voting
18 to accept the Second Amended Plan. They also do not adversely affect other Holders
19 of Claims that voted not to accept the Second Amended Plan within an accepting
20 Class. No Holder of Claims is adversely affected by the Non-Material Modifications.

1 BB. Accordingly, the Non-Material Modifications do not require additional
 2 disclosure under § 1125 or the re-solicitation of acceptances or rejections of the Plan
 3 under § 1126.

4 CC. The filing of the Modified Second Amended Plan, including the Non-
 5 Material Modifications, constitute due and sufficient notice thereof under the
 6 circumstances of the Chapter 11 Cases. Accordingly, the Modified Second Amended
 7 Plan is properly before the Bankruptcy Court, and all votes cast with respect to the
 8 Second Amended Plan prior to the Non-Material Modifications shall be binding and
 9 shall apply with respect to the Modified Second Amended Plan.

10 **IMPLEMENTATION OF THE PLAN**

11 DD. All documents and agreements necessary to implement the Plan,
 12 including, but not limited to, the Plan Supplement documents, are essential elements
 13 of the Plan and consummation of each agreement is in the best interests of the
 14 Debtors, the Estates, and Holders of Claims. The Debtors and, where applicable, the
 15 other Plan Proponents, have exercised reasonable business judgment in determining
 16 to enter into the contemplated agreements, and the agreements have been negotiated
 17 in good faith, at arms'-length, are fair and reasonable, and shall, upon execution and
 18 upon the occurrence of the Effective Date, constitute legal, valid, binding,
 19 enforceable, and authorized obligations of the respective parties thereto and will be
 20 enforceable in accordance with their terms. Pursuant to § 1142(a), the Plan
 21 Supplement documents, and any other agreements necessary to implement the Plan

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1 will apply and be enforceable notwithstanding any otherwise applicable non-
2 bankruptcy law.

3 **CONDITIONS TO THE CONFIRMATION OF THE PLAN**

4 EE. Each of the conditions precedent to entry of this Order has been satisfied
5 in accordance with Section III.AA of the Plan.

6 **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

7 FF. Pursuant to §§ 365 and 1123(b)(2), upon the occurrence of the Effective
8 Date, Section IV of the Plan provides for the assumption or rejection of certain
9 Executory Contracts. The Plan Proponents' determinations regarding the assumption
10 or rejection of Executory Contracts are based on and within the sound business
11 judgment of the Plan Proponents, are necessary to the implementation of the Plan,
12 and are in the best interests of the Debtors, their Estates, Holders of Claims and other
13 parties in interest in the Chapter 11 Cases. The Plan Proponents are authorized to
14 make modifications to the Schedule of Assumed Agreements as provided for in the
15 Plan.

16 **THE SETTLEMENTS UNDER THE PLAN**

17 GG. The Plan settles numerous litigable issues in the Chapter 11 Cases
18 pursuant to Bankruptcy Rule 9019, LBR 9019-1, and §§ 363 and 1123. These
19 settlements are in consideration for the distributions and other benefits provided
20 under the Plan. Any other compromise and settlement provisions of the Plan and the
21 Plan itself constitute a compromise of all Claims or Causes of Action relating to the

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1 contractual, legal and subordination rights that a Holder of a Claim may have with
 2 respect to any Allowed Claim or any distribution to be made on account of such an
 3 Allowed Claim.

4 HH. In consideration of the Senior Debt 9019 Settlement and the Committee
 5 Plan Settlement embodied in the Plan, pursuant to Bankruptcy Rule 9019, LBR 9019-
 6 1, and § 1123 and in consideration for the distributions, releases, and other benefits
 7 provided under the Plan, the provisions of the Plan shall upon the Effective Date
 8 constitute a good-faith compromise and settlement as reflected therein and in all and
 9 any related documents. The entry of this Confirmation Order constitutes the Court's
 10 approval of each of the Senior Debt 9019 Settlement and the Committee Plan
 11 Settlement and all other compromises and settlements provided for in the Plan. The
 12 Court finds that such compromises and settlements are in the best interests of the
 13 Debtors, their estates, creditors, and other parties in interest, and are fair, equitable,
 14 and within the range of reasonableness and consistent with the Debtors' reasonable
 15 business judgment.

16 II. In reaching its decision on the substantive fairness of the Senior Debt
 17 9019 Settlement, the Committee Plan Settlement, and the Plan, the Court considered
 18 the following factors for each such settlement: (i) the balance between the relevant
 19 parties' respective probability of success and the settlements' future benefits; (ii) the
 20 likelihood of complex and protracted litigation and the risk and difficulty of
 21 collecting on the judgment; (iii) the proportion of creditors and parties in interest that

1 support the settlements; (iv) the competency of counsel reviewing the settlement
 2 terms; (v) the nature and breadth of releases to be obtained; and (vi) the extent to
 3 which the settlements are the product of arm's length bargaining.

4 **DEEMED CONSOLIDATION**

5 JJ. As set forth more fully in the Disclosure Statement and Confirmation
 6 Brief, the Plan provides for the "deemed" consolidation of the Debtors. The
 7 Disclosure Statement sets forth (i) the legal requirements to establish deemed
 8 consolidation, and (ii) the factual bases supporting the Debtors' request for deemed
 9 consolidation, which are fully incorporated herein by this reference. Based on the
 10 foregoing, the deemed consolidation of the Debtors set forth in the Plan is appropriate
 11 because the Debtors satisfy the requirements for deemed consolidation set forth in
 12 *Alexander v. Compton (In re Bonham)*, 229 F.3d 750 (9th Cir. 2000), including,
 13 among other things, that it would be economically costly and time-consuming to
 14 attempt to analyze and determine which debts are owed by which specific Debtor
 15 entities, and then to unwind or otherwise bring intercompany actions to obtain
 16 recoveries. The cost of the analysis alone would be at the expense of recoveries to
 17 unsecured creditors in these Chapter 11 Cases.

18 **RELEASES, EXCULPATIONS AND INJUNCTIONS OF RELEASED** 19 **PARTIES**

20 KK. Each non-Debtor Released Party or Exculpated Party that will benefit
 21 from the releases, exculpations, and related injunctions set forth in the Plan

(collectively, the “**Plan Releases**”) either shares an identity of interest with the Debtors, was instrumental to the successful prosecution of the Chapter 11 Cases, and/or provided a substantial contribution to the Debtors, which value provided a significant benefit to the Debtors’ estates and general unsecured creditors, and which will allow for distributions that would not otherwise be available but for the contributions made by such non-Debtor parties. The Plan Releases in Section VII of the Plan are, individually and collectively, integral to, and necessary for the successful implementation of, the Plan and are supported by reasonable consideration.

WAIVER OF STAY

LL. Under the circumstances, it is appropriate that the 14-day stay imposed by Bankruptcy Rules 3020(e) and 7062(a) be waived.

II. ORDER

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. **Confirmation of the Plan.** The Plan (including the Plan Supplement as may be amended from time to time) and each of its provisions (whether or not specifically set forth and approved in this Order), including, but not limited to, the deemed consolidation of the Debtors, is and are CONFIRMED in each and every

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1 respect, pursuant to § 1129, and the terms of the Plan and the Plan Supplement are
 2 incorporated by reference into, and are an integral part of, this order (“**Confirmation**
 3 **Order**”), provided, however, that if there is any direct conflict between the terms of
 4 the Plan and the terms of this Confirmation Order, the terms of this Confirmation
 5 Order shall control. The Effective Date of the Plan shall occur on the date when the
 6 conditions set forth in Section III.BB.1 of the Plan have been satisfied or, if
 7 applicable, have been waived in accordance with Section III.BB.2 of the Plan. The
 8 failure to specifically include or to refer to any particular article, section, or provision
 9 of the Plan, Plan Supplement, or any related document in this Order shall not diminish
 10 or impair the effectiveness of such article, section, or provision, it being the intent of
 11 the Court that this Confirmation Order confirm the Plan and any related documents
 12 in their entirety.

13 2. **Notice.** Notice of the Confirmation Hearing complied with the terms of
 14 the Disclosure Statement Order, was appropriate and satisfactory based on the
 15 circumstances of the Chapter 11 Cases, and was in compliance with the provisions
 16 of applicable law, including, without limitation, the Bankruptcy Code, the
 17 Bankruptcy Rules, and the LBR. In addition, the procedures to provide notice of any
 18 Schedule of Assumed Contracts to all counterparties to Executory Contracts with the
 19 Debtors are adequate and sufficient, in substantial compliance with the Disclosure
 20 Statement Order, Bankruptcy Rules 2002(b), 3017 and 3020(b), and LBR 2002-1 and
 21

6006-1, and no other or further notice is or shall be required (other than as expressly provided for in the Plan for any amendments to the Schedule of Assumed Contracts).

3. **Objections.** The Objections to confirmation of the Plan are OVERRULED in their entirety except as otherwise set forth herein.

4. **Plan Classification Controlling.** The terms of the Plan shall solely govern the classification of Claims for purposes of the distributions to be made thereunder. The classifications set forth on the Ballots tendered to or returned by the holders of Claims in connection with voting on the Plan pursuant to the Disclosure Statement Order: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim as representing the actual classification of such Claim under the Plan for distribution purposes; and (d) shall not be binding on the Plan Proponents, Reorganized Debtors, GUC Distribution Trust, or, in the event the Multicare Transaction Payment is not funded and irrevocably released to the Lapis Parties on or before the Effective Date, the Liquidation Trust, except for voting purposes.

5. **Order Binding on All Parties.** Notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and this Order shall be immediately binding upon, and inure to the benefit of: (a) the Plan Proponents; (b) the Reorganized Debtors; (c) the Liquidation Trust;

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(d) the GUC Distribution Trust; (e) any and all holders of Claims (irrespective of whether such Claims are impaired under the Plan or whether the Holders of such Claims accepted, rejected or are deemed to have accepted, or rejected the Plan); (f) Multicare; (g) any other person giving, acquiring, or receiving property under the Plan; (h) any and all non-Debtor parties to Executory Contracts with any of the Debtors; and (i) the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors, or assigns, if any, of any of the foregoing. On the Effective Date, all settlements, compromises, releases, waivers, discharges, exculpations, and injunctions set forth in the Plan shall be effective and binding on all Persons.

6. **Other Essential Documents and Agreements.** The form of documents comprising the Plan Supplement, any other agreements, instruments, certificates, or documents related thereto, and the transactions contemplated by each of the foregoing are approved and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties, shall be in full force and effect and valid, binding, and enforceable in accordance with their terms without the need for any further notice to or action, order, or approval of this Court, or other act or action under applicable law, regulation, order, or rule. The Plan Proponents and the Official Committee of Unsecured Creditors (the “**Committee**”), and after the Effective Date, Reorganized Debtors and/or the Liquidation Trustee and/or the GUC Distribution Trustee (as may be applicable), are authorized, without further approval

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1 of this Court or any other party, to execute and deliver all agreements, documents,
 2 instruments, securities, and certificates relating to such agreements and perform their
 3 obligations thereunder, including, without limitation, payment of all fees due
 4 thereunder or in connection therewith. Such parties are further authorized to make
 5 non-material modifications to conform the Plan Supplement documents to the
 6 Modified Second Amended Plan prior to such documents' execution.

7 7. **Unclassified Claims.** On and after the Effective Date, the treatment of
 8 the Unclassified Claims of the Debtors shall be effectuated pursuant to Section II of
 9 the Plan, which is specifically approved in all respects, is incorporated herein in its
 10 entirety, and is so ordered.

11 (a) **Administrative Claims Bar Date.** Pursuant to the
 12 Administrative Claims Bar Date Order, and except as otherwise provided in Section
 13 II.D.1.c of the Plan, requests for payment of Administrative Claims were required to
 14 be filed by July 22, 2020 (unless such date was extended by stipulation with a specific
 15 potential administrative creditor) (the "**Initial Administrative Claims Bar Date**").
 16 Pursuant to Section II.D.1.c of the Plan, requests for payment of Administrative
 17 Claims incurred after the date the Administrative Claims Bar Date Order was entered
 18 but prior to the Effective Date are required to file and serve such Claims on the
 19 Reorganized Debtors within thirty (30) days after the Effective Date (the
 20 "**Supplemental Administrative Claims Bar Date**," and together with the Initial
 21 Administrative Claims Bar Date, the "**Administrative Claims Bar Date**"). Holders

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1 of Administrative Claims that were required to, but did or do not, file and serve a
 2 request for payment of such Administrative Claims by the applicable Administrative
 3 Claims Bar Date are and will be forever barred, estopped and enjoined from asserting
 4 such Administrative Claims against the Debtors or their property and such
 5 Administrative Claims shall be deemed discharged as of the Effective Date.

6 (b) **Professional Fee Claims Incurred Prior to the Effective Date.**

7 Pursuant to Section II.D.2 of the Plan, all persons and entities seeking an award by
 8 the Court of professional fees on behalf of the Debtors (a) shall file their respective
 9 final applications for allowance of compensation for services rendered and
 10 reimbursement of expenses no later than forty-five (45) days after the Effective Date,
 11 and, (b) upon Court approval of such final application, shall receive, in full
 12 satisfaction, settlement, and release of, and in exchange for such Claim, from the
 13 Administrative and Priority Claims Reserve, Cash in such amounts as allowed by the
 14 Court (i) on the later of (A) the Effective Date (or as soon thereafter as reasonably
 15 practicable) and (B) the date that is ten (10) days after the allowance date, or (ii) upon
 16 such other terms as may be mutually agreed upon between the holder of such Claim
 17 and the Plan Proponents, and consistent with the terms of the Definitive Documents.
 18 For the avoidance of doubt, estate Professionals may still receive interim
 19 compensation prior to the Effective Date if otherwise able to under existing court
 20 orders.

(c) **Statutory Fees.** Pursuant to Section VII.P of the Plan, quarterly fees accruing under 28 U.S.C. § 1930(a)(6) (“**U.S. Trustee Fees**”) to date of Confirmation shall be paid to the U.S. Trustee on or before the Effective Date of the Plan. U.S. Trustee Fees accruing after Confirmation shall be paid by the Liquidation Trust to the U.S. Trustee in accordance with 28 U.S.C. § 1930(a)(6) and the Liquidation Trust Agreement until entry of a final decree, or entry of an order of dismissal or conversion to chapter 7. If the Liquidation Trust fails to timely pay the U.S. Trustee Fees that come due after Confirmation, the Reorganized Debtors shall remain obligated to pay the fees and may seek indemnification from the Liquidation Trust.

8. **Authorization of Exit Loan.** Upon entry of this Confirmation Order, the Debtors are authorized to execute the Multicare Credit Agreement and the Exit Loan Escrow Agreement and any other related documents to implement the terms as agreements binding on the Debtors and Debtors in Possession and the Reorganized Debtors. In accordance with and subject to the terms of the Multicare Credit Agreement, in the event that a notice of appeal from this Order is filed, Multicare shall not be obligated to fund the Exit Loan or make the Multicare Transaction Payment.

9. **Post-Effective Date Corporate Actions.** Unless the Multicare Transaction Payment is funded and irrevocably released to the Lapis Parties by the Effective Date, then the post-Effective Date corporate actions shall be effectuated

1 pursuant to Section III.E of the Plan. The Reorganized Debtors (controlled by AH
 2 System as the sole member, in the event the Multicare Transaction Payment is not
 3 funded and irrevocably released to the Lapis Parties by the Effective Date) will
 4 provide the management for the Hospitals pursuant to Section III.J of the Plan. Both
 5 of these provisions which are specifically approved in all respects, are incorporated
 6 herein in their entirety, and are so ordered.

7 (a) **Continued Existence.** Pursuant to the Plan, on and after the
 8 Effective Date, the Debtors, except for the Liquidating Debtors, shall continue in
 9 existence as the Reorganized Debtors, subject only to those restrictions expressly
 10 imposed by the Plan or this Confirmation Order as well as the documents and
 11 instruments executed and delivered in connection with the Plan, including the
 12 documents, exhibits, instruments, and other materials constituting the Plan
 13 Supplement.

14 (b) **Termination of the Patient Care Ombudsman.** Pursuant to
 15 Section VII.N of the Plan, on the Effective Date, the appointment of the PCO shall
 16 be deemed terminated and she is authorized to dispose of any documents provided to
 17 her in the course of her reporting.

18 (c) **Termination of the Committee.** Pursuant to Section III.K of the
 19 Plan, on the Effective Date, the Committee shall be deemed dissolved, the retention
 20 and employment of the Committee's Professionals shall be deemed terminated, and
 21 the members of the Committee shall be deemed released and discharged of and from

1 all further authority, duties, responsibilities, and obligations related to and arising
 2 from and in connection with the Chapter 11 Cases, other than for purposes of filing
 3 and/or objecting to final fee applications filed in the Chapter 11 Cases; provided,
 4 however, that the Committee's obligations arising under confidentiality agreements,
 5 joint interest agreements, and protective orders, if any, entered during the Chapter 11
 6 Cases shall remain in full force and effect according to their terms.

7 (d) **Formation of the POC.** Pursuant to Section III.K of the Plan, on
 8 the Effective Date, the post-Effective Date oversight committee (as defined in
 9 Section 1.128 of the Plan, the "**POC**") shall be appointed. The members that shall
 10 serve on the POC were selected by the Committee and have been disclosed in the
 11 Plan Supplement.

12 (e) **Appointment of GUC Distribution Trustee.** Steven D Sass
 13 LLC is appointed as the GUC Distribution Trustee as of the date of the execution of
 14 the GUC Distribution Trust Agreement. The parties to the GUC Distribution Trust
 15 Agreement are authorized to make non-material modifications to the GUC
 16 Distribution Trust Agreement to conform the GUC Distribution Trust Agreement to
 17 the Modified Second Amended Plan prior to the execution of the GUC Distribution
 18 Trust Agreement.

19 10. **Means for Implementation of the Plan.** On and after the Effective
 20 Date, the Plan's implementation shall be effectuated pursuant to Section III of the
 21

1 Plan, which is specifically approved in all respects, is incorporated herein in its
2 entirety, and is so ordered.

3 (a) **The Settlement Agreements.** Pursuant to Sections III.A and
4 III.B of the Plan, Bankruptcy Rule 9019, LBR 9019-1, and § 1123(b)(3), the entry of
5 this Confirmation Order constitutes the Bankruptcy Court's approval, as of the
6 Effective Date, of each of the Senior Debt 9019 Settlement and Committee Plan
7 Settlement and the finding that (i) entering into each of the Senior Debt 9019
8 Settlement and Committee Plan Settlement is in the best interests of the Debtors, their
9 Estates, and their Claim Holders, (ii) each of the Senior Debt 9019 Settlement and
10 Committee Plan Settlement is fair, equitable, and reasonable, and (iii) each of the
11 Senior Debt 9019 Settlement and Committee Plan Settlement meets all the standards
12 set forth in Bankruptcy Rule 9019 and § 1123(b)(3).

13 (b) **No Further Court Authorization.** Pursuant to Section V of the
14 Plan, and except as provided in the Plan or this Confirmation Order, on and after the
15 Effective Date, the Reorganized Debtors (and with respect to General Unsecured
16 Claims, the GUC Distribution Trustee) shall have the sole authority to administer and
17 adjust the Claims Register with respect to Claims to reflect any such settlements or
18 compromises and no further notice to or action, order, or approval of the Court with
19 respect to such settlements or compromises shall be required. Pursuant to Section
20 VII.K of the Plan, from and after the Effective Date, Reorganized Debtors may
21 operate their business and use, acquire and dispose of property without supervision

1 by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy
2 Rules, other than those restrictions expressly imposed by the Plan and this
3 Confirmation Order.

4 (c) Except as set forth in the Plan, all actions authorized to be taken
5 pursuant to the Plan shall be effective on, prior to, or after the Effective Date, as
6 applicable, pursuant to this Confirmation Order without further application to, or
7 order of, this Court, or further action by the respective trustees, directors, or members
8 of the Reorganized Debtors and the Liquidation Trust.

9 (d) To the extent that, under applicable non-bankruptcy law, any of
10 the foregoing actions would otherwise require the consent or approval of the directors
11 of any of the Debtors, Reorganized Debtors, or the Liquidation Trust, this
12 Confirmation Order shall, pursuant to § 1142, constitute such consent or approval,
13 and such actions are deemed to have been taken by unanimous action of the directors
14 of the appropriate Debtor, the Reorganized Debtors, or the Liquidation Trust, unless
15 the Plan expressly provides that such party must provide such consent after the
16 Effective Date.

17 (e) Each federal, state, commonwealth, local, foreign, or other
18 governmental agency is hereby directed and authorized to accept any and all
19 documents, mortgages, and instruments necessary or appropriate to effectuate,
20 implement, or consummate the transactions contemplated by the Plan and this
21 Confirmation Order.

(f) All transactions effected by the Debtors during the pendency of the Chapter 11 Cases from the Petition Date through the Confirmation Date are approved and ratified.

(g) **Preservation of Insurance.** Nothing in the Plan shall diminish, impair, or otherwise affect distributions from the proceeds or the enforceability of any insurance policies that may cover (a) Claims by any Debtor, or (b) Claims against any Debtor or covered Persons thereunder, pursuant to Section III.O of the Plan.

11. **Plan Distributions.** On and after the Effective Date, distributions on account of Allowed Claims and the resolution and treatment of Disputed Claims shall be effectuated pursuant to Sections II and III of the Plan, which are specifically approved in all respects, are incorporated herein in their entirety, and are so ordered. The record date for making distributions under the Plan shall be the date of entry of this Confirmation Order.

12. **Supplemental GUC Distribution Amount.** In the event the Multicare Transaction Payment is funded and irrevocably released to the Lapis Parties by the Effective Date, in addition to the Initial GUC Distribution Amount, the Second GUC Distribution Amount, the GUC Vendor Recovery, and any other assets the Debtors or Reorganized Debtors are required to contribute to the GUC Distribution Trust under the Plan, the Reorganized Debtors shall contribute two hundred thousand dollars (\$200,000) to the GUC Distribution Trust on each of the first, second, and third anniversaries of the Effective Date of the Plan, a total of six hundred thousand

dollars (\$600,000) in the aggregate (the “Supplemental GUC Distribution Amount”).

The Supplemental GUC Distribution Amount shall constitute GUC Distribution Trust Assets under Section 1.89 of the Plan along with the Initial GUC Distribution Amount, the Second GUC Distribution Amount, the GUC Avoidance Actions, the GUC Vendor Recovery, any recovery for the GUC Distribution Trust under the terms of the D&O Cause of Action Agreement, and any other assets to be contributed to the GUC Distribution Trust under the Plan, and shall be distributed to Holders of Allowed General Unsecured Claims consistent with Section II.E.4 of the Plan.

13. **Procedures for Treating and Resolving Disputed Claims.** On and after the Effective Date, the procedures for the treatment and resolution of Disputed Claims shall be effectuated pursuant to Sections V of the Plan, which is specifically approved in all respects, is incorporated herein in its entirety, and is so ordered. Pursuant to Section III.R of the Plan, no payments of Cash or distributions of other property or other consideration of any kind shall be made on account of any Disputed Claim unless and until such Claim becomes an Allowed Claim or is deemed to be such for purposes of distribution, and then only to the extent that the Claim becomes, or is deemed to be for distribution purposes, an Allowed Claim.

14. **Resolution of Disputed Claims.** Pursuant to Section V.B.2 of the Plan, on or after the Effective Date, the Reorganized Debtors (and with respect to General Unsecured Claims, the GUC Distribution Trustee), subject to Section V.A of the Plan, (a) shall have the authority to File objections to Claims, and the exclusive

1 authority, to settle, compromise, withdraw, or litigate to judgment objections on
 2 behalf of the Debtors' Estates to any and all Claims, except with respect to any Claim
 3 or Interest deemed Allowed as of the Effective Date; and (b) shall have the sole
 4 authority to administer and adjust the Claims Register with respect to Claims to
 5 reflect any such settlements or compromises and no further notice to or action, order,
 6 or approval of the Court with respect to such settlements or compromises shall be
 7 required.

8 15. **Executory Contracts and Unexpired Leases.** On and after the
 9 Effective Date, the treatment of Executory Contracts shall be effectuated pursuant to
 10 Sections IV.A and IV.B of the Plan, which are specifically approved in all respects,
 11 are incorporated herein in its entirety, and are so ordered.

12 (a) **General Treatment.** Pursuant to Section IV.B.1 of the Plan,
 13 immediately prior to the Effective Date, all Executory Contracts of the Debtors will
 14 be deemed rejected in accordance with the provisions and requirements of §§ 365
 15 and 1123, and will receive a Notice of Rejection of Executory Agreement,
 16 substantially in the form annexed hereto as **Exhibit "A,"** except those Executory
 17 Contracts that (i) have been assumed by order of the Court, (ii) are subject to a motion
 18 to assume pending on the Effective Date, or (iii) have been identified on the Schedule
 19 of Assumed Agreements. Pursuant to Section IV.A.3 of the Plan, any party to an
 20 Executory Agreement listed to be assumed in any Schedule of Assumed Agreements
 21 wishing to object to the proposed assumption (including with respect to the cure

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amounts) was required to do so by no later than seven (7) days after the filing of the Schedule of Assumed Agreements (“**Assumption Objection**”). Any Entity that failed to timely file with the Bankruptcy Court and serve such Assumption Objection is deemed to have waived any and all objections to the proposed assumption of its contract or lease.

(b) **Cure of Defaults.** Except to the extent that a different treatment has been agreed to by the non-Debtor party or parties to any Executory Agreement to be assumed pursuant to Section IV.A of the Plan, pursuant to the provisions of §§ 1123(a)(5)(G) and 1123(b)(2) and consistent with the requirements of § 365, any monetary amounts by which each Executory Contract to be assumed is in default shall be satisfied by payment from the Administrative and Priority Claims Reserve, of the default amount as set forth in the Schedule of Assumed Agreements filed by the Debtors [Docket Nos. 2043, 2082]. The Debtors will reserve amounts for Disputed Cure Payments in an amount estimated by the Debtors to be sufficient or in such amount otherwise set by the Bankruptcy Court.

(c) **Bar Date for Rejection Damages.** Pursuant to Section IV.B.2 of the Plan, Claims arising out of the rejection of an Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court and served upon counsel to the Debtors within 30 days after the entry of an order (including this Confirmation Order) approving such rejection. Any Claims not filed within such time period will be forever barred and unenforceable against Debtors, the Estate, Reorganized Debtors,

1 the GUC Distribution Trust, and their respective property, and shall be deemed
 2 disallowed and expunged in their entirety without the need for further application to
 3 or approval of the Court; and Entities holding such Claims will be barred from
 4 receiving any distribution under the Plan on account of such untimely claims.

5 16. **Conditions Precedent to the Effective Date.** On and after the
 6 Effective Date, the conditions precedent to the Confirmation of the Plan, the
 7 conditions precedent to the Effective Date, and the waiver provisions therefor
 8 pursuant to Sections III.AA and III.BB of the Plan are specifically approved in all
 9 respects, are incorporated herein in their entirety, and are so ordered.

10 17. **Effect of Confirmation.** On and after the Effective Date, the Plan shall
 11 be effectuated pursuant to Section VII of the Plan, which is specifically approved in
 12 all respects, is incorporated herein in its entirety, and is so ordered.

13 (a) **Release of Liens.** Pursuant to Section VII.C of the Plan, except
 14 as otherwise provided in the Plan or in any contract, instrument, release, or other
 15 agreement or document created pursuant to the Plan, on the Effective Date and
 16 concurrently with the applicable distributions made pursuant to the Plan and, in the
 17 case of a Secured Claim (other than a DIP Claim, Senior Secured Bond Claim, or
 18 Senior Secured Credit Agreement Claim, in the event the Multicare Transaction
 19 Payment is not funded and irrevocably released to the Lapis Parties by the Effective
 20 Date), satisfaction in full of the portion of the Secured Claim that is Allowed as of
 21 the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security

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1 interests against any property of the Estate shall be fully released, settled, and
2 compromised.

3 (b) **Compromise and Settlement of Claims, Interests, and**
4 **Controversies.** Pursuant to Section VII.B of the Plan, Bankruptcy Rule 9019, and
5 LBR 9019-1, and in consideration for the distributions and other benefits provided
6 pursuant to the Plan, and except as otherwise specifically provided in the Plan or in
7 any contract, instrument, or other agreement or document created pursuant to the
8 Plan, the distributions, rights, and treatment that are provided in the Plan shall be in
9 complete settlement, compromise, and release, effective as of the Effective Date, of
10 Claims, Interests, and Causes of Action of any nature whatsoever, including any
11 interest accrued on Claims or Interests from and after the Petition Date, including,
12 but not limited to, all known or unknown liabilities of, Liens on, obligations of, rights
13 against, and Interests in, the Debtor or any of its assets or properties, regardless of
14 whether any property shall have been distributed or retained pursuant to the Plan on
15 account of such Claims and Interests, including demands, liabilities, and Causes of
16 Action that arose before the Effective Date, any liability to the extent such Claims or
17 Interests relate to services performed by employees of the Debtor before the Effective
18 Date and that arise from a termination of employment, any contingent or non-
19 contingent liability on account of representations or warranties issued on or before
20 the Effective Date, and all debts of the kind specified in §§ 502(g), 502(h), or 502(i),
21 in each case whether or not: (a) a Proof of Claim or proof of Interest based upon such

1 debt, right, or Interest is Filed or deemed Filed pursuant to § 501; (b) a Claim or
 2 Interest based upon such debt, right, or Interest is Allowed pursuant to § 502; or (c)
 3 the Holder of such a Claim or Interest has accepted the Plan. Any default by the
 4 Debtor or its Affiliates with respect to any Claim or Interest that existed immediately
 5 before or on account of the filing of the Chapter 11 Case shall be deemed cured on
 6 the Effective Date.

7 (c) **Discharge, Releases, Injunctions, and Exculpation.** The Plan
 8 discharge, release, injunction, and exculpation provisions set forth in Section VII of
 9 the Plan are approved in all respects, are incorporated herein in their entirety, are so
 10 ordered, and shall be immediately effective on the Effective Date of the Plan without
 11 further order or action on the part of the Court or any other party.

12 (d) **Discharge.** Pursuant to Section VII.A of the Plan, except as
 13 otherwise provided in the Plan or this Confirmation Order or in any Executory
 14 Contract assumed by Debtors during the Chapter 11 Cases (including, without
 15 limitation, the Debtors' indemnification obligations thereunder): (i) on the Effective
 16 Date, the Debtors, the Estate, the Reorganized Debtors, and their property shall be
 17 discharged and released to the fullest extent permitted by §§ 524 and 1141 from all
 18 Claims, including all debts, obligations, demands, liabilities, and Claims that arose
 19 before the Effective Date, and all debts of the kind specified in §§ 502(g), 502(h), or
 20 502(i), regardless of whether or not (A) a proof of Claim based on such debt is Filed
 21 or deemed Filed, (B) a Claim based on such debt is allowed pursuant to § 502, or (C)

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1 the Holder of a Claim based on such debt or Interest has or has not accepted the Plan;
 2 (ii) any judgment underlying a Claim discharged hereunder shall be void; and (iii) all
 3 Entities shall be precluded from asserting against the Debtors, the Estate, the
 4 Reorganized Debtors, or their respective property any Claims based upon any act or
 5 omission, transaction, or other activity of any kind or nature that occurred prior to
 6 the Effective Date. To the extent any Claim is paid other than under the Plan, Debtors
 7 will be deemed discharged and released with respect to such Claim and such Claim
 8 and shall not receive a distribution under the Plan.

9 (e) **Debtors' Releases.** The release provisions set forth in Section
 10 VII.F.1 of the Plan are (i) found to be (1) in exchange for the good and valuable
 11 consideration provided by the Released Parties; (2) a good-faith settlement and
 12 compromise of the Claims released by the Debtors' Releases; (3) in the best interests
 13 of the Debtors' Estates and all Holders of Claims and Interests; (4) fair, equitable,
 14 and reasonable; (5) given and made after due notice and opportunity for hearing; and
 15 (6) a bar against any of the Debtors' Estates, the Reorganized Debtors, the GUC
 16 Distribution Trust, or the Liquidation Trust, asserting any Claim or Cause of Action
 17 released pursuant to the Debtors' Releases; and (ii) approved in all respects, are
 18 incorporated herein in their entirety, are so ordered, and shall be immediately
 19 effective on the Effective Date of the Plan without further order or action on the part
 20 of the Court or any other party:
 21

1 ON THE EFFECTIVE DATE OF THE PLAN AND TO THE
 2 FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE
 3 RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY
 4 WILL BE EXPRESSLY, UNCONDITIONALLY, GENERALLY
 5 AND INDIVIDUALLY AND COLLECTIVELY RELEASED,
 6 ACQUITTED AND DISCHARGED BY THE DEBTORS ON
 7 BEHALF OF THEMSELVES, THEIR ESTATES, THE
 8 REORGANIZED DEBTORS, THE GUC DISTRIBUTION TRUST
 9 AND THE LIQUIDATION TRUST (SUCH THAT THE
 10 REORGANIZED DEBTORS, THE GUC DISTRIBUTION TRUST
 11 AND THE LIQUIDATION TRUST WILL NOT HOLD ANY
 12 CLAIMS OR CAUSES OF ACTION RELEASED PURSUANT TO
 13 THE PLAN), FOR THE GOOD AND VALUABLE
 14 CONSIDERATION PROVIDED BY EACH OF THE RELEASED
 15 PARTIES, FROM ANY AND ALL ACTIONS, CLAIMS, DEBTS,
 16 OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF
 17 ACTION, REMEDIES AND LIABILITIES WHATSOEVER,
 18 INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON
 19 BEHALF OF THE DEBTOR, WHETHER KNOWN OR UNKNOWN,
 20 FORESEEN OR UNFORESEEN, MATURED OR UNMATURED,
 21 EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY,
 CONTRACT, TORT OR OTHERWISE, BY STATUTE,
 VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR
 OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT
 OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR
 CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO
 OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED
 IN ANY WAY TO THE DEBTORS, ANY OF THE DEBTORS'
 PRESENT OR FORMER ASSETS, THE RELEASED PARTIES'
 INTERESTS IN OR MANAGEMENT OF THE DEBTORS, THE
 PLAN, THE DISCLOSURE STATEMENT, THIS CHAPTER 11
 CASE, OR ANY RESTRUCTURING OF CLAIMS OR INTERESTS
 UNDERTAKEN PRIOR TO THE EFFECTIVE DATE, INCLUDING
 THOSE THAT THE DEBTORS, THE REORGANIZED DEBTORS,
 THE GUC DISTRIBUTION TRUST, OR THE LIQUIDATION
 TRUST WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT
 OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST
 IN THE DEBTOR OR ANY OTHER ENTITY COULD HAVE BEEN
 LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON
 BEHALF OF THE DEBTORS OR THEIR ESTATES INCLUDING
 WITH RESPECT TO THE LAPIS PARTIES ANY CHALLENGE TO

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CLAIMS AND RIGHTS OF THE LAPIS PARTIES UNDER THE BOND DOCUMENTS AND CREDIT AGREEMENT DOCUMENTS; *PROVIDED, HOWEVER*, THAT THE FOREGOING “DEBTORS’ RELEASES” SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR CAUSES OF ACTION OF THE DEBTORS OR THEIR ESTATES AGAINST A RELEASED PARTY ARISING UNDER ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTORS THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN.

(f) **Third Party Releases.**

(i) Pursuant to Rule 9019 and LBR 9019-1, the Third Party Releases set forth in Section VII.F.2 of the Plan, including by reference each of the related provisions and definitions contained in the Plan, are (A) found to be (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of the claims released by the Third Party Release; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any Claim released pursuant to the Third Party Release; and (B) are approved in all respects, are incorporated herein in their entirety, are so ordered, and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party:

ON THE EFFECTIVE DATE OF THE PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASING PARTIES SHALL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY, RELEASED AND

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1 ACQUITTED THE RELEASED PARTIES AND THEIR
 2 RESPECTIVE PROPERTY FROM ANY AND ALL ACTIONS,
 3 CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS,
 4 DAMAGES, CAUSES OF ACTION, REMEDIES AND
 5 LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE
 6 CLAIMS ASSERTED ON BEHALF OF THE DEBTOR, WHETHER
 7 KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN,
 8 MATURED OR UNMATURED, EXISTING OR HEREAFTER
 9 ARISING, IN LAW, EQUITY, CONTRACT, TORT OR
 10 OTHERWISE, THAT SUCH HOLDER (WHETHER
 11 INDIVIDUALLY OR COLLECTIVELY) EVER HAD, NOW HAS
 12 OR HEREAFTER CAN, SHALL OR MAY HAVE, BASED ON OR
 13 RELATING TO, OR IN ANY MANNER ARISING FROM OR
 14 RELATED IN ANY WAY TO THE DEBTORS, ANY OF THE
 15 DEBTORS' PRESENT OR FORMER ASSETS, THE RELEASED
 16 PARTIES' INTERESTS IN OR MANAGEMENT OF THE
 17 DEBTORS, THE BUSINESS OR CONTRACTUAL
 18 ARRANGEMENTS BETWEEN THE DEBTORS AND ANY
 19 RELEASED PARTY, THE PLAN, THE DISCLOSURE
 20 STATEMENT, THESE CHAPTER 11 CASES, OR ANY
 21 RESTRUCTURING OF CLAIMS OR INTERESTS UNDERTAKEN
 PRIOR TO THE EFFECTIVE DATE, INCLUDING THOSE THAT
 THE DEBTORS, THE REORGANIZED DEBTORS, THE GUC
 DISTRIBUTION TRUST, OR THE LIQUIDATION TRUST
 WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR
 THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN
 THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN
 LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON
 BEHALF OF THE DEBTORS OR THEIR ESTATES, EXCEPT FOR
 (I) ANY CLAIMS AND CAUSES OF ACTION FOR ACTUAL
 FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT
 AND (II) THE RIGHT TO RECEIVE DISTRIBUTIONS FROM THE
 DEBTORS, THE REORGANIZED DEBTORS, THE GUC
 DISTRIBUTION TRUST, OR THE LIQUIDATION TRUST ON
 ACCOUNT OF AN ALLOWED CLAIM AGAINST THE DEBTORS
 PURSUANT TO THE PLAN. FOR THE AVOIDANCE OF DOUBT,
 THE RELEASING PARTIES SHALL INCLUDE (A) THE
 RELEASED PARTIES, AND (B) ALL HOLDERS OF CLAIMS
 THAT (I) VOTE TO ACCEPT THE PLAN, AND (II) DO NOT
 AFFIRMATIVELY OPT OUT OF THE THIRD PARTY RELEASE
 PROVIDED BY THIS SECTION PURSUANT TO A DULY

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1 EXECUTED BALLOT. NOTWITHSTANDING ANYTHING TO
 2 THE CONTRARY HEREIN, IN NO EVENT SHALL AN ENTITY
 3 THAT (X) DOES NOT VOTE TO ACCEPT OR REJECT THE PLAN,
 4 (Y) VOTES TO REJECT THE PLAN, OR (Z) APPROPRIATELY
 5 MARKS THE BALLOT TO OPT OUT OF THE THIRD PARTY
 6 RELEASE PROVIDED IN THIS SECTION AND RETURNS SUCH
 7 BALLOT IN ACCORDANCE WITH THE SOLICITATION
 8 PROCEDURES ORDER, BE A RELEASING PARTY.

9 (ii) Notwithstanding the foregoing, there shall be no release or
 10 exculpation by or injunction against any Committee Member holding a Claim or
 11 representing a Holder of a Claim that has opted out of the Third Party Release or has
 12 not voted on the Plan, except solely in such Committee Member's capacity as such.

13 (iii) The foregoing release as to the Lapis Parties is an integral
 14 component of the Senior Debt 9019 Settlement. Pursuant to § 1123(b)(3)(A) and the
 15 Senior Debt 9019 Settlement, as of the Effective Date, for good and valuable
 16 consideration, the adequacy of which is hereby confirmed, to the maximum extent
 17 permitted by law, each Holder of any Claim shall be deemed to forever release, waive,
 18 and discharge all Claims, obligations, suits, judgments, damages, demands, debts,
 19 rights, causes of action, and liabilities whatsoever, against the Lapis Parties arising
 20 from or related to the Lapis Parties' pre- and/or post-petition actions, omissions or
 21 liabilities, transaction, occurrence, or other activity of any nature except for as
 provided in the Plan or the Confirmation Order.

(g) **Permanent Injunction.** The injunction provision set forth in
 Section VII.A of the Plan is approved in all respects, is incorporated herein in its

entirety, is so ordered, and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party:

[A]ll Entities who have held, currently hold, or may hold a debt or Claim against the Debtors, the Estate, the Reorganized Debtors, or their respective property that is based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, that otherwise arose or accrued prior to the Effective Date (other than any act or omission, transaction, or other activity of any kind or nature related to or arising from the Exit Loan), or that is otherwise discharged pursuant to the Plan, shall be permanently enjoined from taking any of the following actions on account of any such discharged debt, Claim, or Interest (the “**Permanent Injunction**”): (i) commencing or continuing in any manner any action or other proceeding against the Debtors, the Estates, the Reorganized Debtors, or their respective property that is inconsistent with the Plan or the Confirmation Order; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors, the Estate, the Reorganized Debtors, or their respective property other than as specifically permitted under the Plan, as approved by the Confirmation Order; (iii) creating, perfecting, or enforcing any lien or encumbrance against the Debtors, the Estate, the Reorganized Debtors, or their respective property; and (iv) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan, the Confirmation Order, or the discharge provisions of § 1141. Any Entity injured by any willful violation of such Permanent Injunction shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages, from the willful violator.

(h) **Plan Injunction.** The Plan Injunction provision set forth in Section VII.G of the Plan is approved in all respects, is incorporated herein in its entirety, is so ordered, and shall be immediately effective on the Effective Date of the Plan without further order or action on the part of the Court or any other party:

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, INTERESTS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) HAVE BEEN RELEASED PURSUANT TO SECTION VII.F.1 HEREOF; (3) HAVE BEEN RELEASED PURSUANT TO SECTION VII.F.2 HEREOF; (4) ARE SUBJECT TO EXCULPATION PURSUANT TO SECTION VII.E HEREOF; OR (5) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, INTERESTS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE GUC DISTRIBUTION TRUST, THE LIQUIDATION TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE GUC DISTRIBUTION TRUST, THE LIQUIDATION TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE GUC DISTRIBUTION TRUST, THE LIQUIDATION TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR

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EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES; (D) ASSERTING ANY RIGHT OF SETOFF OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATES OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH ENTITY HAS TIMELY ASSERTED SUCH SETOFF OR SUBROGATION RIGHT PRIOR TO CONFIRMATION IN A DOCUMENT FILED WITH THE COURT EXPLICITLY PRESERVING SUCH SETOFF OR SUBROGATION; AND (E) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS, THE REORGANIZED DEBTORS, THE GUC DISTRIBUTION TRUST, THE LIQUIDATION TRUST, OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTOR OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, CAUSES OF ACTION, OR LIABILITIES RELEASED, SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; PROVIDED THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN; PROVIDED, FURTHER, THAT NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

(i) **Exculation.** The Plan Exculation provision set forth in Section VII.E of the Plan is approved in all respects, is incorporated herein in its entirety, is

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1 so ordered, and shall be immediately effective on the Effective Date of the Plan
 2 without further order or action on the part of the Court or any other party:

3 The Exculpated Parties shall neither have, nor incur any liability
 4 to any Entity for any postpetition act taken or omitted to be taken in
 5 connection with the Chapter 11 Cases, or related to formulating,
 6 negotiating, soliciting, preparing, disseminating, confirming, or
 7 implementing the Plan or consummating the Plan, the Disclosure
 8 Statement, or any contract, instrument, release, or other agreement or
 9 document created or entered into in connection with the Plan, or any
 10 other postpetition act taken or omitted to be taken in connection with or
 11 in contemplation of the restructuring of the Reorganized Debtors,
 12 liquidation of the Liquidating Debtors, or administration of the GUC
 13 Distribution Trust. Without limiting the foregoing "Exculpation"
 14 provided under this Section, the rights of any Holder of a Claim or
 15 Interest to enforce rights arising under the Plan shall be preserved,
 including the right to compel payment of distributions in accordance
 with the Plan; provided, that the foregoing "Exculpation" shall have no
 effect on the liability of any Entity for liability solely to the extent
 resulting from any such act or omission taken after the Effective Date
 or of any Entity solely to the extent resulting from any act or omission
 that is determined in a final order to have constituted gross negligence
 or willful misconduct; provided, further, that, subject to the foregoing
 exclusions, each Exculpated Party shall be entitled to rely upon the
 advice of counsel concerning his, her, or its duties pursuant to, or in
 connection with, the Plan or any other related document, instrument, or
 agreement. The exculpation of the Lapis Parties is an integral
 component of the Senior Debt 9019 Settlement.

16 (j) **Waiver of Statutory Limitations on Releases.** The waiver of
 17 statutory limitations on releases provision set forth in Section VII.H of the Plan is
 18 approved in all respects, is incorporated herein in its entirety, is so ordered, and shall
 19 be immediately effective on the Effective Date of the Plan without further order or
 20 action on the part of the Court or any other party:
 21

1 EACH RELEASING PARTY IN EACH OF THE RELEASES
 2 CONTAINED IN THE PLAN (INCLUDING UNDER THIS
 3 SECTION) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH
 4 ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO
 5 CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW
 6 OR SUSPECT TO EXIST IN ITS FAVOR, WHICH IF KNOWN BY
 7 IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT
 8 WITH THE PARTY RELEASED, IT HAVING CAREFULLY
 9 CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING
 10 TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE
 11 EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS.
 12 WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,
 13 EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND
 14 ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR
 15 RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES
 16 NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT
 17 KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF
 18 EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY
 19 HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE
 20 RELEASED PARTY. THE RELEASES CONTAINED IN THIS
 21 SECTION ARE EFFECTIVE REGARDLESS OF WHETHER
 THOSE RELEASED MATTERS ARE PRESENTLY KNOWN,
 UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR
 UNFORESEEN.

(k) **Limitation on Liability of Liquidation Trustee and GUC**

Distribution Trustee. The limitation on liability provision set forth in Section VII.I
 of the Plan is approved in all respects, is incorporated herein in its entirety, is so
 ordered, and shall be immediately effective on the Effective Date of the Plan without
 further order or action on the part of the Court or any other party:

The GUC Distribution Trustee will not be liable for any act it may do
 or omit to do as GUC Distribution Trustee under the Plan and GUC
 Distribution Trust Agreement, as applicable, while acting in good faith
 and in the exercise of his or her reasonable business judgment; nor will
 the GUC Distribution Trustee be liable in any event except for gross
 negligence, fraud, or willful misconduct. The foregoing limitation on

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liability will also apply to any Person or Entity (including any attorney or other professional) employed by the GUC Distribution Trustee and acting on behalf of the GUC Distribution Trustee in the fulfillment of the GUC Distribution Trustee's duties under the Plan or the GUC Distribution Trust Agreement. Also, the GUC Distribution Trustee and any Person or Entity (including any attorney or other professional) employed by the GUC Distribution Trustee and acting on behalf of the GUC Distribution Trustee shall be entitled to indemnification out of the assets of the GUC Distribution Trust against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that they may incur or sustain by reason of being, having been, or being or having been employed by, the GUC Distribution Trustee, or for performing any function incidental to such service.

The Liquidation Trustee will not be liable for any act it may do or omit to do as Liquidation Trustee under the Plan and Liquidation Trust Agreement, as applicable, while acting in good faith and in the exercise of its reasonable business judgment; nor will the Liquidation Trustee be liable in any event except for gross negligence, fraud, or willful misconduct. The foregoing limitation on liability will also apply to any Person or Entity (including any attorney or other professional) employed by the Liquidation Trustee and acting on behalf of the Liquidation Trustee in the fulfillment of the Liquidation Trustee's duties under the Plan or the Liquidation Trust Agreement. Also, the Liquidation Trustee and any Person or Entity (including any attorney or other professional) employed by the Liquidation Trustee and acting on behalf of the Liquidation Trustee shall be entitled to indemnification out of the assets of the Liquidation Trust against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that they may incur or sustain by reason of being, having been, or being or having been employed by, the Liquidation Trustee, or for performing any function incidental to such service.

(l) **Revesting of Property.** Upon the Effective Date, pursuant to Section VII.K of the Plan and §§ 1141(b) and (c), except as provided elsewhere in the Plan or in the Exchange Debt Documents, the assets of the Estate shall be revested

1 in the Reorganized Debtors, free and clear of all Claims, liens, encumbrances, and
2 Interests.

3 18. **Preservation of Claims and Causes of Action.** Pursuant to Sections
4 1.22 and 1.130 of the Plan, the Claims and Causes of Action preserved under the Plan
5 and in this Confirmation Order include, without limitation:

6 (a) the right to object to, challenge or otherwise contest any claims,
7 whether or not any such claim is the subject of a proof of claim;

8 (b) any right of setoff, counterclaim, or recoupment and any claim
9 for breach of contract or for breach of duties imposed by law or in equity;

10 (c) any claim pursuant to § 362;

11 (d) any claim or defense including fraud, mistake, duress, and usury,
12 and any other defenses set forth in § 558;

13 (e) all claims, causes of action (avoidance or otherwise), objections,
14 rights, and remedies arising under Chapter 5 of the Bankruptcy Code pursuant to,
15 among others, §§ 502, 510, 542 through 545 and 547 through 553 or 558 thereof, or
16 similar or equivalent claims, causes of action, objections, rights, and remedies arising
17 under state law, including all Avoidance Actions, irrespective of whether or not the
18 targets of such causes of action have been identified by name, or any transfers subject
19 to avoidance have been listed, in the Debtors' Schedules, the Disclosure Statement,
20 the Plan, or any other document Filed in the Chapter 11 Cases;

21 (f) the Vendor Claims;

(g) claims under any Insurance Policies applicable to the Debtors;

(h) all claims of any kind or nature arising under state or federal law against any of the Debtors' current or former vendors relating to services rendered prior to the Petition Date;

(i) all claims, causes of action, and other rights (including rights to challenge any asserted Lien) of any kind or nature against any party asserting a claim in these cases, unless expressly and in writing released or waived during the Chapter 11 Cases, including under the Plan;

(j) all legal and equitable defenses against any Claim or Cause of Action asserted against the Debtors;

(k) all claims and/or Causes of Action of any kind or nature arising under state or federal law arising under a theory of negligence, professional negligence, and/or malpractice;

(l) all claims and/or Causes of Action of any kind or nature arising under state law based fraudulent conveyance theories;

(m) all claims and/or Causes of Action constituting, for, based upon, or relating to a breach of fiduciary duty, a tort, a contract, an Avoidance Action, federal or state preference or fraudulent transfer laws, or any federal or state statutory rights or requirements, whether based in law or equity, against any of the current and former members, managers, and/or officers of the Debtors; and

(n) all Avoidance Actions against AHM, Inc.

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Pursuant to Section III.I of the Plan, the D&O Causes of Action shall be preserved for the benefit of the Debtors' Estates and their creditors. The mechanism for (a) the vesting, revesting, and/or transfer of the D&O Causes of Action and any related insurance policies (including the D&O Insurance Policies), (b) the prosecution and/or settlement or other resolution of the D&O Causes of Action (including the funding of the fees and costs attendant to such prosecution and/or settlement or other resolution), and (c) unless the Multicare Transaction Payment has been funded and irrevocably released to the Lapis Parties by the Effective Date, the sharing of any proceeds of the D&O Causes of Action shall be subject to the D&O Cause of Action Agreement filed as part of the Plan Supplement, which is hereby approved.

Pursuant to Section V.B.1 of the Plan, on and after the Effective Date, the Reorganized Debtors (and with respect to General Unsecured Claims, the GUC Distribution Trustee), shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date.

19. **Issues Concerning Cerner Corporation and Cerner RevWorks Ltd. ("Cerner").**

Notwithstanding anything in the Plan or this Order to the contrary, the *Request for Allowance and Payment of Administrative Expense Claim of Cerner Corporation*

1 [Docket No. 1573] and related demands for cure payments will be resolved in an
 2 adversary proceeding to be filed in the Bankruptcy Court. The Reorganized Debtors
 3 have thirty (30) days from the date of entry of this Order to file a complaint to
 4 commence such adversary proceeding (the “Adversary Proceeding”) and, to the
 5 extent applicable, the Federal Rules of Bankruptcy Procedure relating to adversary
 6 proceedings shall thereafter apply to matters set forth therein. The Reorganized
 7 Debtors and Cerner reserve all rights, claims and defenses in the Adversary
 8 Proceeding; provided that there is no right to challenge the Bankruptcy Court’s
 9 previous ruling (or any subsequent decision related thereto) that matters are to
 10 proceed by way of the Adversary Proceeding as opposed to proceeding via
 11 arbitration. Notwithstanding anything in the Plan or this Order to the contrary, (a)
 12 all prepetition and postpetition claims, obligations, causes of action or other rights
 13 existing between the Debtors and Cerner, including any cure and administrative
 14 claims asserted by Cerner, shall be included and determined in the Adversary
 15 Proceeding; (b) the bar date for Cerner to file any claim for rejection damages under
 16 the Plan and paragraph 14(c) of this Order do not apply to Cerner and, instead, any
 17 such rejection damages shall be determined as part of the Adversary Proceeding; (c)
 18 nothing in the Plan or this Order shall place a cap on or purport to estimate the
 19 allowed amount or payment of Cerner’s cure or administrative claims; (d) nothing in
 20 the Plan or this Order shall impair, prevent, or otherwise adversely affect the rights,
 21 remedies, claims, and defenses in the nature of setoff, if any such rights exist, of

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1 either Cerner or the Debtors so long as such rights, claims or defenses are exercised
 2 solely in connection with the Adversary Proceeding; and (e) the permanent injunction
 3 and discharge provisions in the Plan and paragraphs 14(g) and (h) of this Order do
 4 not apply to any actions by Cerner taken in the Adversary Proceeding or as to
 5 enforcement of the CBA⁵ for failure to timely pay any amounts first coming due
 6 under the CBA after the Effective Date or for the Reorganized Debtors' failure to
 7 timely pay any allowed cure or administrative claim to Cerner after the Effective
 8 Date. The Court shall retain post-judgment jurisdiction for any judgments issued in
 9 the Adversary Proceeding.

10 With respect to the Debtors' *Motion to Assume and Reject Contracts Between*
 11 *the Debtors, Cerner Corporation and Cerner RevWorks* [Docket No. 2086], the
 12 Debtors' request to assume the CBA⁶ and reject the RevWorks Contract, to the extent

13 _____
 14 ⁵ All capitalized terms in this paragraph 19, not otherwise defined in this Order, shall
 15 have the meaning afforded in the *Motion to Assume and Reject Contracts Between*
 16 *the Debtors, Cerner Corporation and Cerner RevWorks* [Docket No. 2086].

17 ⁶ The CBA refers to all Cerner licenses, products, equipment, software, services, and
 18 support associated with Debtors' CommunityWorks electronic health record
 19 software platform and ecosystem that are not RevWorks Services. Cerner asserts that
 20 some of the software solutions provided for under the CBA include, but are not
 21 limited to: PowerChart, Ambulatory, Cerner Patient Accounting, CareAware iBus,

1 that contract is not previously terminated, if any, is granted. Unless the Court
 2 determines otherwise before the Effective Date of the Plan, the CBA (including all
 3 the documents thereto identified in Exhibit A of the Enyeart Declaration [Docket No.
 4 2145]), less the RevWorks Contract, shall be deemed assumed on the Effective Date;
 5 provided that nothing prohibits the Court from reserving an assessment of any of the
 6 assertions made in or the documents attached to the Enyeart Declaration after the
 7 Plan Effective Date. The Debtors (and to the extent applicable, the Reorganized
 8 Debtors) will advise Cerner and endeavor to determine with Cerner by January 18,
 9 2021, which documents attached to the Enyeart Declaration are part of the CBA
 10 sought to be assumed. To the extent that the Debtors or Reorganized Debtors raise
 11 an objection as to which documents comprise the CBA and the parties are unable to
 12 resolve that objection, an evidentiary hearing shall be held on January 21, 2021, at

13 _____
 14 Mobile Patient eSignature, Microbiology for CommunityWorks, Blood Bank
 15 Transfusion for CommunityWorks, Laboratory Imaging for CommunityWorks,
 16 Practice Management: Registration and Scheduling, Patient Statements, ePrescribe,
 17 Anesthesia Management for CommunityWorks, Anatomic Pathology for
 18 CommunityWorks; Clinical Supply Chain, CommunityWorks Radiology Suite,
 19 FetaLink; Cerner HealtheRegistries, and Cerner Bridge. The CBA also covers
 20 services that are not RevWorks Services, like Application Management Services and
 21 remote hosting.

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1 11:00 a.m. (the “CBA Hearing”) to determine such issues, which date may be further
 2 extended by order of the Court. Cerner and the Reorganized Debtors shall each
 3 simultaneously file with the Court written submissions addressing the remaining
 4 disputed issues at least twenty-four (24) hours prior to the CBA Hearing. If the Court
 5 subsequently determines that any part of the “deemed assumed” CBA includes an
 6 agreement or document related to Cerner RevWorks (collectively the “Unassumed
 7 Documents”), the deemed assumed decision shall not apply to the Unassumed
 8 Documents, and the Unassumed Documents shall be deemed to have been rejected
 9 on the Effective Date.

10 The Reorganized Debtors shall timely pay all Cerner invoices that relate to the
 11 assumed CBA that become due after the Effective Date. Cerner and the Debtors
 12 reserve all rights, claims, and remedies for any alleged failure by Debtors to timely
 13 pay all such periodic amounts that come due under the CBA after the Effective Date
 14 of the Plan. Any award to Cerner with respect to alleged administrative claims or
 15 alleged cure claims (including the Maximum Cerner Administrative Claim identified
 16 in the Lane Declaration [Docket No. 2190]), if any, will constitute an operating
 17 expense that will be paid ahead of (*i.e.*, before) any payment of the Excess Lapis
 18 Payments (as defined in the Lane Declaration [Docket No. 2190]) (to the extent
 19 necessary). Nothing in the Plan or this Order shall impair, prevent, or otherwise
 20 adversely affect Cerner’s ability to exercise all rights, and pursue all appropriate legal
 21 claims and remedies as a result of any failure by Debtors to timely pay all amounts

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1 that first come due after the Effective Date to Cerner under the assumed CBA.
 2 Further, notwithstanding any other provision in the Plan or this Order (including
 3 paragraph 14(b) herein), the Reorganized Debtors will not fund any reserve for any
 4 alleged cure or administrative claims by Cerner. However, the Reorganized Debtors
 5 shall manage their cash flow after the Effective Date to maintain the ability to timely
 6 pay any allowed cure or administrative claims, including but not limited to
 7 Reorganized Debtors not making any optional prepayments to the Lapis Parties or
 8 Multicare that materially impair the ability of the Reorganized Debtors to pay any
 9 such allowed cure or administrative claims.

10 Nothing in the Plan or this Order shall impair, prevent, or otherwise adversely
 11 affect any of the Debtors' or Cerner's rights, remedies, claims, and defenses to
 12 Vendor Claims. Also, Cerner is not a Releasing Party under the Plan and paragraph
 13 14(f) of this Order does not apply to Cerner. Cerner and the Debtors and Reorganized
 14 Debtors preserve all rights, claims or defenses with respect to any assertion that
 15 obligations owed by or paid by the Debtors related to the Nuance Communications,
 16 Inc. administrative claim [*see* Docket No. 2182] create any estoppel or waiver issues
 17 against the Debtors or Reorganized Debtors with respect to Cerner's cure claim.

18 20. **Specific Stipulations Regarding the Plan.**

19 (a) **D&O Cause of Action Agreement**

20

21

The following language is included in this Confirmation Order as agreed between the Plan Proponents and the Committee pursuant to Section III.I of the Plan and the D&O Cause of Action Agreement:

- Preservation of D&O Causes of Action. Consistent with Section VII.K of the Plan, the D&O Causes of Action and D&O Policies shall revest in the Reorganized Debtors upon the occurrence of the Effective Date.
- Grant of Standing. Upon the occurrence of the Effective Date, the GUC Distribution Trustee shall automatically be granted, have, and be vested with exclusive standing and authority to (i) bring the D&O Causes of Action in any court of competent jurisdiction, (ii) prosecute the D&O Causes of Action through final judgment, (iii) settle the D&O Causes of Action, and/or (iv) otherwise resolve the D&O Causes of Action; provided, however, notwithstanding such exclusive standing, the GUC Distribution Trustee shall (a) regularly consult with the Lapis Parties with respect to the D&O Causes of Action, and (b) obtain the express written consent of the Lapis Parties prior to initiating, settling or otherwise resolving any of the D&O Causes of Action, which consent shall not be unreasonably withheld; provided further, however, that to the extent the GUC Distribution Trustee and the Lapis Parties, after good faith negotiation, cannot reach agreement regarding the GUC Distribution Trustee's initiating, settling and/or otherwise resolving the D&O Causes of Action, the GUC Distribution Trustee may seek a resolution of such dispute by the Court and, with respect to any proposed settlement or other resolution of the D&O Causes of Action, may file a motion with the Court seeking approval of the settlement or other resolution pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and the standards applicable thereto. Upon the occurrence of the Effective Date, the GUC Distribution Trustee shall automatically be (a) deemed a representative of the Reorganized Debtors with respect to the D&O Causes of Action and the D&O Policies, and (b) granted and have the right to control any and all privileges and protections on behalf of the Reorganized Debtors with respect to the D&O Causes of Action.
- Retention and Compensation of Counsel. Any selection of counsel and/or other professionals to represent the GUC Distribution Trustee with respect to the D&O Causes of Action and the terms of such counsel's and/or other professionals' compensation shall be jointly

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determined by the GUC Distribution Trustee and the Lapis Parties. Subject to section four (4) of the D&O Cause of Action Agreement, ongoing costs and expenses of the GUC Distribution Trustee and the GUC Distribution Trustee's counsel and/or other professionals incurred with respect to the D&O Causes of Action and payable prior to the receipt of any proceeds of the D&O Causes of Action (the "**Ongoing Costs**") shall be paid from the GUC Distribution Trust.

- **Sharing of Proceeds.** Any net proceeds of the D&O Causes of Action and/or any related D&O Policies, after accounting for all costs and expenses of the GUC Distribution Trustee (including all fees and expenses of counsel and other professionals retained pursuant to section three (3) of the D&O Cause of Action Agreement and all Ongoing Costs paid by the GUC Distribution Trust pursuant to section three (3) of the D&O Cause of Action Agreement), in asserting the D&O Causes of Action in a court of competent jurisdiction, prosecuting the D&O Causes of Action through final judgment, settling the D&O Causes of Action, and/or otherwise resolving the D&O Causes of Action (the "**Net Proceeds**"), shall be divided evenly between the GUC Distribution Trust and the Liquidation Trust (*i.e.*, the GUC Distribution Trust shall receive fifty percent (50%) of any Net Proceeds and the Liquidation Trust shall receive fifty percent (50%) of any Net Proceeds).
- In the event the Multicare Transaction Payment has been funded and irrevocably released to the Lapis Parties by the Effective Date, the D&O Cause of Action Agreement shall remain in effect but the Reorganized Debtors shall be substituted for all references to the Lapis Parties under said instrument.

(b) **Premier Executory Contract Rejection.**

The Plan Proponents and Premier, Inc. (with its consolidated subsidiaries, including Premier Healthcare Solutions, Inc. and Healthcare Insights, LLC, collectively, "**Premier**") have resolved the *Limited Objection of Premier, Inc. and Its Subsidiaries to Confirmation of Debtors' Second Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 2066] by agreeing that rejection of the Premier executory contract will be effective on the Effective Date of the Plan.

1 (c) **Notice in the GUC Distribution Trust.**

2 To resolve that portion of the *Objection to Second Amended Plan* [Docket No.
3 2068] filed by the United States Trustee that the notice provision in paragraph 3.3 of
4 the GUC Distribution Trust is too limited, the Plan Proponents have agreed to amend
5 the GUC Distribution Trust to provide that the notice of selection of a “conflicts
6 trustee” will be filed with the Court on the docket, in addition to being served on
7 Trustee.

8 (d) **United Payor Agreements.**

9 Notwithstanding anything to the contrary in the Plan, the Plan Supplement or
10 this Confirmation Order (except as provided in this paragraph), all payor contracts
11 by and between the Debtors, on the one hand, and United Healthcare of Washington,
12 Inc. and its direct and indirect parents, affiliates and subsidiaries (collectively,
13 “**United**”), on the other hand, including the “Hospital Participation Agreement,”
14 “Facility Participation Agreements” and “Medical Group Participation Agreements,”
15 shall be assumed as of the Effective Date of the Plan (the “**Assumed United Payor**
16 **Agreements**”); provided, that the certain Hospital Participation Agreement by and
17 between United and SHC Medical Center-Yakima (the “**Rejected United Payor**
18 **Agreements**”) is deemed rejected as of the Effective Date of the Plan. In lieu of the
19 immediate payment of a cure or any other respective obligations of the Debtors’
20 under the Assumed United Provider Agreements, if any, as of the Effective Date,
21 shall pass through and survive assumption so that nothing in the Plan, the Plan

1 Supplement, this Confirmation Order, or section 365 of the Bankruptcy Code shall
 2 affect United's rights of recovery and/or recoupment, if any, under the United Payor
 3 Agreements for any such obligations, or any defenses of the Debtors with respect
 4 thereto.

5
 6 (e) **United States' Rights Under PPP Loans and Medicare
 Provider Agreements**

7 The Debtors recognize that Banner Bank (the "Lender"), on behalf of itself
 8 and its assigns, subrogees and guarantors, has asserted that is entitled to
 9 administrative priority status pursuant to sections 364(b) and 503(b)(1) of the
 10 Bankruptcy Code to the full amount of Debtors' obligation on the PPP Loans, as
 11 defined by the loan documents and law applicable to the PPP Loans; the Debtors
 12 reserve their rights to object. If the PPP Loans are later not forgiven and become due
 13 after the Effective Date, the Debtors will agree to make payments to the Lender on
 14 the PPP Loans over time in the ordinary course of business.

15 Nothing in this Order shall be construed as (i) determining, construing, or
 16 limiting any right, obligation, or term of the PPP Loans, loan documents, or law
 17 governing the PPP loans, including whether all or any part of the PPP Loans are
 18 subject to forgiveness; (ii) determining this Court's authority to make a determination
 19 about whether all or any part of the PPP Loans is subject to forgiveness under the
 20 loan documents and law governing the PPP Loans.
 21

1 Notwithstanding any provisions to the contrary in the Plan, this Order
 2 confirming the Plan, and any implementing Plan documents, nothing shall affect the
 3 United States' appeal of the Order Granting Preliminary Injunction in the SBA
 4 Adversary Proceeding, and the District Court proceedings related thereto.

5 Notwithstanding anything to the contrary in the Debtors' Plan, any of its
 6 exhibits, the Plan Supplement, or this Confirmation Order, CMS' right of
 7 recoupment, if any, and CMS' administration of the Debtors' Medicare Provider
 8 Agreements and federal Medicare laws and regulations, are unaffected by the
 9 confirmation of the Plan.

10 This Confirmation Order shall be an order authorizing the Debtors to assume
 11 their Medicare Provider Agreements on the Effective Date, including all benefits and
 12 burdens.

13 Upon assumption, the Medicare Provider Agreements will be governed by the
 14 appropriate federal Medicare laws, statutes, regulations, policies and procedures.

15 For avoidance of doubt, nothing in this Confirmation Order shall be construed
 16 to affect the rights of the United States to assert setoff and recoupment, if any.

17 (f) **The Washington State Health Care Authority's Rights**
 18 **Under Medicaid Provider Agreements**

19 Notwithstanding anything to the contrary in the Debtors' Plan, any of its
 20 exhibits, the Plan Supplement, or this Confirmation Order, the Washington State
 21 Health Care Authority's right of recoupment, if any, and the Health Care Authority's

1 administration of the Debtors' Medicaid Provider Agreements and federal and state
 2 Medicaid laws and regulations are unaffected by the confirmation of the Plan.

3 For avoidance of doubt, nothing in this Confirmation Order shall be construed
 4 to affect the rights of the State of Washington under the Medicaid Provider
 5 Agreements to make any setoff and/or recoupment, if any such rights exist.

6 21. **Retention of Jurisdiction.** Unless otherwise provided in the Plan or in
 7 this Confirmation Order, on and after the Effective Date, the Bankruptcy Court shall
 8 retain jurisdiction over the Chapter 11 Cases and all matters arising out of, or related
 9 to, the Chapter 11 Cases and the Plan, including jurisdiction over those matters and
 10 issues described in Section VI of the Plan, which is specifically approved in all
 11 respects, is incorporated herein in its entirety, and is so ordered.

12 22. **Miscellaneous Provisions.** The miscellaneous provisions of Section
 13 VII of the Plan are specifically approved in all respects, are incorporated herein in
 14 their entirety, and are so ordered.

15 23. **Severability.** In the event that the Bankruptcy Court determines, prior
 16 to the Effective Date, that any provision of the Plan is invalid, void or unenforceable,
 17 the Bankruptcy Court shall, have the power to alter and interpret such term or
 18 provision to make it valid or enforceable to the maximum extent practicable,
 19 consistently with the original purpose of the term or provision held to be invalid, void
 20 or unenforceable, and such term or provision shall then be applicable as altered or
 21 interpreted. Notwithstanding any such holding, alteration or interpretation, the

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1 remainder of the terms and provisions of the Plan shall remain in full force and effect
 2 and shall in no way be affected, impaired or invalidated by such holding, alteration
 3 or interpretation. This Confirmation Order shall constitute a judicial determination
 4 and shall provide that each term and provision of the Plan, as it may have been altered
 5 or interpreted in accordance with the foregoing, is valid and enforceable pursuant to
 6 its terms.

7 24. **Binding Effect of Prior Orders.** Pursuant to § 1141, effective as of the
 8 Confirmation Date, but subject to the occurrence of the Effective Date and subject to
 9 the terms of the Plan and this Order, all prior orders entered in the Chapter 11 Cases,
 10 all documents and agreements executed by the Debtors as authorized and directed
 11 thereunder, and all motions or requests for relief by the Debtors pending before the
 12 Court as of the Effective Date shall be binding upon and shall inure to the benefit of
 13 the Debtors, the Reorganized Debtors, the GUC Distribution Trust, the Liquidation
 14 Trust, and their respective successors and assigns.

15 25. **Notice of Confirmation of the Plan.** Pursuant to Bankruptcy Rules
 16 2002(f)(7) and 3020(c)(2), the Plan Proponents will serve a notice of the entry of this
 17 Order substantially in the form of **Exhibit “B”** attached hereto and incorporated
 18 herein by reference (the “**Confirmation Notice**”), to all parties in the creditor
 19 database maintained by KCC, no later than five (5) Business Days after the
 20 Confirmation Date; provided, however, that the Plan Proponents will serve the
 21 Confirmation Notice only on the record Holders of Claims as of the Confirmation

1 Date. The Debtors will publish the Confirmation Notice once in USA Today and
 2 Yakima Herald Republic, Inc. as soon as reasonably practicable after the
 3 Confirmation Date, but no later than five (5) Business Days after the Confirmation
 4 Date. As soon as practicable after the entry of this Order, the Debtors will make
 5 copies of this Order and the Confirmation Notice available on the Debtors'
 6 restructuring website at <http://www.kccellc.net/AstriaHealth>. As soon as practicable
 7 after the occurrence of the Effective Date pursuant to the terms of the Plan, the
 8 Debtors will serve the notice of Effective Date, substantially in the form attached
 9 hereto as **Exhibit "C"** (the "**Notice of Effective Date**") on all parties served with the
 10 Confirmation Notice.

11 26. **Reserves.** Pursuant to Section 1.7 of the Plan and Section IV.I of the
 12 Confirmation Brief, the amount of the Administrative and Priority Claims Reserve
 13 established pursuant to Sections II.D.4 and III.L of the Plan shall be approximately
 14 \$4,624,674 (the "**Administrative, Professional and Priority Claims Cap**"). The
 15 amount of the Administrative Claims Reserve is sufficient to satisfy any unpaid
 16 Administrative Claims that are Allowed as of the Effective Date.

17 27. **Modification of the Plan.** Pursuant to Section VII.M of the Plan, the
 18 Debtors reserve the right, in accordance with the Bankruptcy Code and the
 19 Bankruptcy Rules and with the prior written consent of the Lapis Parties and the
 20 Committee, or as otherwise approved by the Court, to amend or modify the Plan at
 21 any time prior to the entry of this Confirmation Order. After the entry of this

Confirmation Order, the Plan Proponents may, in consultation with the Committee or the GUC Distribution Trustee, as applicable, and upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with § 1127(b), or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A Holder of an Allowed Claim that is deemed to have accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such holder. Notwithstanding the foregoing, the Plan Proponents are authorized to file Plan Supplements on or before the Effective Date of the Plan.

28. **Final Decree.** Once the Estates have been fully administered as referred to in Rule 3022, the Reorganized Debtors shall file a motion with the Court to obtain a final decree to close the Chapter 11 Cases.

29. **Governing Law.** Pursuant to Section I.D of the Plan, unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated in the Plan, the laws of the State of Washington, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); provided that corporate or

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1 limited liability company governance matters relating to the Debtors or the
 2 Reorganized Debtors, as applicable, not incorporated or formed (as applicable) in the
 3 State of Washington shall be governed by the laws of the state of incorporation or
 4 formation (as applicable) of the applicable Debtor or Reorganized Debtor.

5 30. **Notice.** Except as otherwise provided in the Plan and this Order, as of
 6 the Effective Date, notice of all subsequent pleadings in the Chapter 11 Cases shall
 7 be limited to counsel to the Reorganized Debtors, counsel to the POC, the GUC
 8 Distribution Trustee, the Liquidation Trustee, the U.S. Trustee, and any party known
 9 to be directly affected by the relief sought.

10 31. **References to Plan.** Any document related to the Plan that refers to a
 11 chapter 11 plan of the Plan Proponents other than the Plan confirmed by this Order
 12 shall be, and it hereby is, deemed to be modified such that the reference to a chapter
 13 11 plan of the Plan Proponents in such document shall mean the Plan confirmed by
 14 this Order, as appropriate.

15 32. **Reconciliation of Inconsistencies.** Without intending to modify any
 16 prior Order of this Court (or any agreement, instrument or document addressed by
 17 any prior Order), in the event of an inconsistency between the Plan, on the one hand,
 18 and any other agreement, instrument, or document intended to implement the
 19 provisions of the Plan, on the other, the provisions of the Plan shall govern (unless
 20 otherwise expressly provided for in such agreement, instrument, or document). In
 21 the event of any inconsistency between the Plan or any agreement, instrument, or

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Confirmation Order

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document intended to implement the Plan, on the one hand, and this Order, on the other, the provisions of this Order shall govern.

33. **Automatic Stay.** Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to §§ 105 or 362 or any order of this Court and extant on the date of entry of this Confirmation Order (excluding any injunctions or stays contained in the Plan or this Confirmation Order) shall remain in full force and effect until the Closing of the Chapter 11 Cases. All injunctions or stays contained in the Plan or this Order shall remain in full force and effect in accordance with their terms.

34. **Order Effective Immediately.** Notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, the stay provided for under Bankruptcy Rule 3020(e) shall be waived and this Order shall be effective and enforceable immediately upon entry. The Plan Proponents are authorized to consummate the Plan and the transactions contemplated thereby immediately after entry of this Order and upon, or concurrently with, satisfaction of the conditions set forth in the Plan.

///End of Order//

1 PRESENTED BY:

2 DENTONS US LLP

3 /s/ Samuel R. Maizel

SAMUEL R. MAIZEL (*Pro Hac Vice*)

4 SAM J. ALBERTS (WSBA #22255)

5 *Attorneys for the Chapter 11*

Debtors and Debtors In Possession

6 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

7 /s/ William Kannel

8 WILLIAM KANNEL (*Pro Hac Vice*)

IAN A. HAMMEL (*Pro Hac Vice*)

9 *Attorneys for the Lapis Parties*

21 Confirmation Order

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Exhibit A

Form of Notice of Rejection of Executory Agreement

Confirmation Order

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Attorneys for the Lapis Parties

HONORABLE WHITMAN L.
HOLT

Attorneys for the Chapter 11
Debtors and Debtors In Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

ASTRIA HEALTH, *et al.*,

Debtors and Debtors in
Possession.¹

Chapter 11
Lead Case No. 19-01189-11
Jointly Administered

**NOTICE OF REJECTION OF
EXECUTORY AGREEMENTS**

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).

Rejection Notice

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PLEASE TAKE NOTICE OF THE FOLLOWING:

REJECTION OF EXECUTORY AGREEMENTS

1. By Order dated December __, 2020 [Docket No. __] (the “Confirmation Order”), the United States Bankruptcy Court for the Eastern District of Washington (the “Bankruptcy Court”) confirmed the *Modified Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor Affiliates* [Docket No. 2196] (including all exhibits thereto, any plan supplement, and as amended, modified, or supplemented from time to time, the “Plan”)² filed by Astria Health, a Washington nonprofit public benefit corporation (“Astria”), and the above-referenced affiliated debtors and debtors in possession (collectively, the “Debtors”), in the above-referenced chapter 11 cases (the “Chapter 11 Cases”) and Lapis Advisers, LP as lender under the debtor in possession facility in the Chapter 11 Cases, agent under the Debtors’ prepetition credit agreement, and as investment advisor and investment manager for certain funds which are beneficial holders of those certain Washington Health Care Facilities Authority Revenue Bonds, Series 2017a Bonds and the Series 2017b Bonds (collectively the “Lapis Parties” and, together with the Debtors, the “Plan Proponents”), as satisfying the requirements of § 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

2. On ____, 2020, the Effective Date of the Plan occurred and the Plan was substantially consummated.

3. YOU ARE OR MIGHT BE A COUNTERPARTY TO AN EXECUTORY AGREEMENT DEEMED REJECTED BY THE PLAN AS OF THE EFFECTIVE DATE.

4. **Rejection of Executory Agreements.** Pursuant to Section IV.B.1 of the Plan, immediately prior to the Effective Date, all Executory Contracts of the Debtors will be deemed rejected in accordance with the provisions and requirements of §§ 365 and 1123 except those Executory Contracts that (i) have been assumed by order of the Court, (ii) are subject to a motion to assume pending on the Effective Date, or (iii) have been identified on a list of assumed contracts to be filed with the Court prior to the Voting Deadline, which shall be a date prior to the Effective Date of the Plan. The Confirmation Order will constitute a Court order approving such rejections of Executory Contracts as of the Effective Date pursuant to §§ 365 and 1123.

5. **Bar Date for Rejection Damages.** Pursuant to Section IV.B.2 of the Plan, Claims arising out of the rejection of an Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court and served upon counsel to the Debtors within 30 days after the entry of an order (including the Confirmation Order) approving such rejection (*i.e.*, __, 2021). Any Claims not filed within such time period will be forever barred from assertion against the Debtors and/or their property and/or their Estates.

6. **Viewing the Plan and Confirmation Order.** The Plan and the Confirmation Order may be obtained: (a) via download from the Bankruptcy Court’s

² Capitalized terms used but not otherwise defined herein have the definitions set forth in the Plan.

1 website at ecf.waeb.uscourts.gov for registered users of the PACER and/or CM/ECF
2 systems (for a fee); (b) via download from www.kccllc.net/astriahhealth; or (c) by (i)
3 written request to Astria Health c/o KCC, LLC, 222 North Pacific Coast Highway,
4 Suite 300, El Segundo, California 90245 or (ii) e-mail request to
5 astriainfo@kcclcc.net.

6
7
8
9 Dated: , 2020

DENTONS US LLP

10 By: _____

11 Samuel R. Maizel
12 Sam J. Alberts
13 Geoffrey M. Miller

14 Counsel to the *Debtors and Debtors In*
15 *Possession*

16
17
18
19 Dated: , 2020

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.

20 By: _____

21 William Kannel
Ian A. Hammel

Counsel to the *Lapis Parties*

Rejection Notice

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Exhibit B

Form of Confirmation Notice

Confirmation Order

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Debtors and Debtors In Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

ASTRIA HEALTH, *et al.*,

Debtors and Debtors in
Possession.¹

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

**NOTICE OF CONFIRMATION OF
MODIFIED SECOND AMENDED
JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF ASTRIA
HEALTH AND ITS DEBTOR
AFFILIATES**

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).

Confirmation Notice

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**CONFIRMATION OF MODIFIED SECOND AMENDED JOINT CHAPTER
11 PLAN OF REORGANIZATION OF ASTRIA HEALTH AND ITS
DEBTOR AFFILIATES**

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1. By Order dated December __, 2020 [Docket No. __] (the “Confirmation Order”), the United States Bankruptcy Court for the Central District of California (the “Bankruptcy Court”) confirmed the *Modified Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor Affiliates* [Docket No. 2196] (including all exhibits thereto, any plan supplement, and as amended, modified, or supplemented from time to time, the “Plan”)² filed by Astria Health, a Washington nonprofit public benefit corporation (“Astria”), and the above-referenced affiliated debtors and debtors in possession (collectively, the “Debtors”), in the above-referenced chapter 11 cases (the “Chapter 11 Cases”) and Lapis Advisers, LP as lender under the debtor in possession facility in the Chapter 11 Cases, agent under the Debtors’ prepetition credit agreement, and as investment advisor and investment manager for certain funds which are beneficial holders of those certain Washington Health Care Facilities Authority Revenue Bonds, Series 2017a Bonds and the Series 2017b Bonds (collectively the “Lapis Parties” and, together with the Debtors, the “Plan Proponents”), as satisfying the requirements of § 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

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2. The Plan and the Confirmation Order may be obtained: (a) via download from the Bankruptcy Court’s website at ecf.waeb.uscourts.gov for registered users of the PACER and/or CM/ECF systems (for a fee); (b) via download from www.kccllc.net/astriahealth; or (c) by (i) written request to Astria Health c/o KCC, LLC, 222 North Pacific Coast Highway, Suite 300, El Segundo, California 90245 or (ii) e-mail request to astriainfo@kcclcc.net.

² Capitalized terms used but not otherwise defined herein have the definitions set forth in the Plan.

1 Dated: , 2020

DENTONS US LLP

2 By:

3 Samuel R. Maizel
4 Sam J. Alberts
5 Geoffrey M. Miller

Counsel to the *Debtors and Debtors In Possession*

6 Dated: , 2020

MINTZ, LEVIN, COHN, FERRIS,
7 GLOVSKY AND POPEO, P.C.

8 By:

9 William Kannel
10 Ian A. Hammel

Counsel to the *Lapis Parties*

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Confirmation Notice

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Exhibit C

Form of Notice of Effective Date

Confirmation Order

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Attorneys for the Chapter 11
Debtors and Debtors In Possession

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

ASTRIA HEALTH, *et al.*,

Debtors and Debtors in
Possession.¹

Chapter 11

Lead Case No. 19-01189-11

Jointly Administered

**NOTICE OF OCCURRENCE OF
EFFECTIVE DATE OF MODIFIED
SECOND AMENDED JOINT CHAPTER
11 PLAN OF REORGANIZATION OF
ASTRIA HEALTH AND ITS DEBTOR
AFFILIATES**

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).

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Effective Date Notice

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1 **PLEASE TAKE NOTICE OF THE FOLLOWING:**

2 **OCCURRENCE OF EFFECTIVE DATE OF MODIFIED SECOND**
 3 **AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF**
 4 **ASTRIA HEALTH AND ITS DEBTOR AFFILIATES**

5 1. By Order dated December __, 2020 [Docket No. __] (the
 6 “Confirmation Order”), the United States Bankruptcy Court for the Eastern District
 7 of Washington (the “Bankruptcy Court”) confirmed the *Modified Second Amended*
 8 *Joint Chapter 11 Plan of Reorganization of Astria Health and Its Debtor Affiliates*
 9 [Docket No. 2196] (including all exhibits thereto, any plan supplement, and as
 10 amended, modified, or supplemented from time to time, the “Plan”)² filed by Astria
 Health, a Washington nonprofit public benefit corporation (“Astria”), and the above-
 referenced affiliated debtors and debtors in possession (collectively, the “Debtors”),
 in the above-referenced chapter 11 cases (the “Chapter 11 Cases”) and Lapis
 Advisers, LP as lender under the debtor in possession facility in the Chapter 11
 Cases, agent under the Debtors’ prepetition credit agreement, and as investment
 advisor and investment manager for certain funds which are beneficial holders of
 those certain Washington Health Care Facilities Authority Revenue Bonds, Series
 2017a Bonds and the Series 2017b Bonds (collectively the “Lapis Parties” and,
 together with the Debtors, the “Plan Proponents”), as satisfying the requirements of
 § 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the
 “Bankruptcy Code”).

11 2. **Effective Date.** On ____, 2020, the Effective Date of the Plan
 12 occurred and the Plan was substantially consummated. All conditions precedent to
 the Effective Date of the Plan set forth in Section III.BB of the Plan have either been
 satisfied or waived in accordance with the Plan and the Confirmation Order.

13 3. **Bar Date for Rejection Damages.** Pursuant to Section IV.B.2 of the
 14 Plan, Claims arising out of the rejection of an Executory Agreement pursuant to the
 15 Plan must be filed with the Bankruptcy Court and served upon counsel to the Debtors
 within 30 days after the entry of an order (including the Confirmation Order)
 approving such rejection (*i.e.*, ____, 2021). Any Claims not filed within such
 time period will be forever barred from assertion against the Debtors and/or their
 property and/or their Estates..

16 4. **Bar Date for Professional Claims.** Pursuant to Section II.D.2 of the
 17 Plan, all persons and entities seeking an award by the Court of professional fees on
 behalf of the Debtors shall file their respective final applications for allowance of
 compensation for services rendered and reimbursement of expenses no later than
 forty-five (45) days after the Effective Date (*i.e.*, ____, 2021).

18 5. **Releases, Injunctions, and Exculpation:** Pursuant to the
 19 Confirmation Order, the releases set forth in Section VII.F of the Plan, the
 injunctions set forth in Section VII.G of the Plan, and the exculpation provisions set
 forth in Section VII.E of the Plan are now in full force and effect.

20 _____
 21 ² Capitalized terms used but not otherwise defined herein have the definitions set forth in the
 Plan.

1 6. **Viewing the Plan and Confirmation Order.** The Plan and the
 2 Confirmation Order may be obtained: (a) via download from the Bankruptcy Court's
 3 website at ecf.waeb.uscourts.gov for registered users of the PACER and/or CM/ECF
 4 systems (for a fee); (b) via download from www.kccllc.net/astriahhealth; or (c) by (i)
 written request to Astria Health c/o KCC, LLC, 222 North Pacific Coast Highway,
 Suite 300, El Segundo, California 90245 or (ii) e-mail request to
astriainfo@kcclcc.net.

5 Dated: , 2020

DENTONS US LLP

6 By: _____

7 Samuel R. Maizel
 8 Sam J. Alberts
 9 Geoffrey M. Miller

10 Counsel to the *Debtors and Debtors In*
 11 *Possession*

12 Dated: , 2020

MINTZ, LEVIN, COHN, FERRIS,
 GLOVSKY AND POPEO, P.C.

13 By: _____

14 William Kannel
 15 Ian A. Hammel

16 Counsel to the *Lapis Parties*

EXHIBIT B

(2) CONFORMING AMENDMENTS.—Sections 7001(e)(3) and 7003(e)(3) of the Families First Coronavirus Response Act are each amended by striking “Any term” and inserting “Except as otherwise provided in this section, any term”.

(b) COORDINATION WITH EXCLUSION FROM EMPLOYMENT TAXES.—Sections 7001(c) and 7003(c) of the Families First Coronavirus Response Act, as amended by subsection (a), are each amended—

(1) by inserting “and section 7005(a) of this Act,” after “determined without regard to paragraphs (1) through (22) of section 3121(b) of such Code”, and

(2) by inserting “and without regard to section 7005(a) of this Act” after “which begins ‘Such term does not include remuneration’ ”.

(c) CLARIFICATION OF APPLICABLE RAILROAD RETIREMENT TAX FOR PAID LEAVE CREDITS.—Sections 7001(e) and 7003(e) of the Families First Coronavirus Response Act, as amended by the preceding provisions of this Act, are each amended by adding at the end the following new paragraph:

“(4) REFERENCES TO RAILROAD RETIREMENT TAX.—Any reference in this section to the tax imposed by section 3221(a) of the Internal Revenue Code of 1986 shall be treated as a reference to so much of such tax as is attributable to the rate in effect under section 3111(a) of such Code.”.

(d) CLARIFICATION OF TREATMENT OF PAID LEAVE FOR APPLICABLE RAILROAD RETIREMENT TAX.—Section 7005(a) of the Families First Coronavirus Response Act is amended by adding the following sentence at the end of such subsection: “Any reference in this subsection to the tax imposed by section 3221(a) of such Code shall be treated as a reference to so much of the tax as is attributable to the rate in effect under section 3111(a) of such Code.”.

(e) CLARIFICATION OF APPLICABLE RAILROAD RETIREMENT TAX FOR HOSPITAL INSURANCE TAX CREDIT.—Section 7005(b)(1) of the Families First Coronavirus Response Act is amended to read as follows:

“(1) IN GENERAL.—The credit allowed by section 7001 and the credit allowed by section 7003 shall each be increased by the amount of the tax imposed by section 3111(b) of the Internal Revenue Code of 1986 and so much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(b) of such Code on qualified sick leave wages, or qualified family leave wages, *1993 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—

<< 15 USCA § 636 >>

- (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—

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(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.—

<< 15 USCA § 9008 >>

(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—

<< 15 USCA § 636 >>

(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—

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“(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;”; and

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

***1996**

(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.—

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“(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).

***1998**

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 *1999 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;

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“(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.

<< 15 USCA § 636 >>

(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:

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“(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) *2001 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:

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“(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 *2002 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

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“(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—

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“(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 ***2005** 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—

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“(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 *2007 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, 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, Nonprofits, 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, Nonprofits, 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 *2008 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 *2009 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.

***2010**

(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.

***2011**

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—

<< 15 USCA § 636 >>

(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:

<< 15 USCA § 636 >>

“(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—

<< 15 USCA § 636 >>

(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 *2012 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—

<< 15 USCA § 636 >>

(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 ***2013** 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—

<< 15 USCA § 636 >>

(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

***2014**

“(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

***2015**

“(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:

<< 15 USCA § 636 >>

“(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;

***2016**

(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—

***2017**

(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 *2018 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)—

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(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.”.

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(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 *2020 (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;

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(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 *2022 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;

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(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 nonprofit 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.

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(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

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(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

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(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—

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(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 *2028 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 *2029 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 *2030 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;

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(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 ***2032** 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:

<< 15 USCA § 9011 >>

“(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 ***2033** 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.

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“(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:

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“(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 ***2036** 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.—

<< 15 USCA § 636 >>

(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.—

<< 15 USCA § 636 >>

(A) TEMPORARY MODIFICATION.—Section 7(a)(31)(A)(iv) of the Small Business Act (15 U.S.C. 636(a)(31)(A)(iv)) is *2037 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—

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(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—

<< 15 USCA § 696 >>

(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 *2039 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 *2040 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:

<< 15 USCA § 697d >>

(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 *2041 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)—

<< 15 USCA § 636 >>

(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)”;

(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 *2042 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

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(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)).

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(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 *2045 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—

<< 15 USCA § 9009 >>

(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

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“(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).

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(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—

<< 15 USCA § 636 >>

(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.

<< 15 USCA § 636 >>

(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.

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SEC. 336. ELECTION OF 12-WEEK PERIOD BY SEASONAL EMPLOYERS.

<< 15 USCA § 636 >>

(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.

<< 15 USCA § 636 >>

(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—

<< 15 USCA § 636 >>

(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 ***2049** (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)).

<< 15 USCA § 636 >>

(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:

<< 15 USCA § 636 >>

(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.—

<< 15 USCA § 636 >>

(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.

<< 15 USCA § 636 >>

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:

<< 15 USCA § 636 >>

(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.”.

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SEC. 343. COVERED PERIOD FOR NEW PARAGRAPH (36) LOANS.

<< 15 USCA § 636 >>

(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—

<< 15 USCA § 636 >>

(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.**

(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—

<< 15 USCA § 9002 >>

(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).”.

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(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

EXHIBIT C

(A) revise the non-Federal allocation for the covered band to permit flexible-use services; and

(B) notwithstanding paragraph (15)(A) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), not later than December 31, 2021, begin a system of competitive bidding under that section to grant new initial licenses for the use of a portion or all of the covered band, subject to flexible-use service rules.

(2) EXEMPTION FROM NOTIFICATION REQUIREMENT.—The first sentence of section 113(g)(4)(A) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(g)(4)(A)) shall not apply with respect to the system of competitive bidding required under paragraph (1)(B) of this subsection.

(3) PROCEEDS TO COVER 110 PERCENT OF FEDERAL RELOCATION OR SHARING COSTS.—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of section 309(j)(16)(B) of the Communications Act of 1934 (47 U.S.C. 309(j)(16)(B)).

TITLEX—BANKRUPTCY RELIEF

SEC. 1001. BANKRUPTCY RELIEF.

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Section 541(b) of title 11, United States Code, is amended—

(A) in paragraph (9), in the matter following subparagraph (B), by striking “or”;

(B) in paragraph (10)(C), by striking the period at the end and inserting “; or”; and

(C) by inserting after paragraph (10) the following:

“(11) recovery rebates made under section 6428 of the Internal Revenue Code of 1986.”.

(2) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act, section 541(b) of title 11, United States Code, is amended—

(A) in paragraph (9), in the matter following subparagraph (B), by adding “or” at the end;

(B) in paragraph (10)(C), by striking “; or” and inserting a period; and

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(C) by striking paragraph (11).

(b) DISCHARGE.—

(1) IN GENERAL.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

“(i) Subject to subsection (d), after notice and a hearing, the court may grant a discharge of debts dischargeable under subsection (a) to a debtor who has not completed payments to the trustee or a creditor holding a security interest in the principal residence of the debtor if—

“(1) the debtor defaults on not more than 3 monthly payments due on a residential mortgage under section 1322(b)(5) on or after March 13, 2020, to the trustee or creditor caused by a material financial hardship due, directly or indirectly, by the coronavirus disease 2019 (COVID–19) pandemic; or

“(2)(A) the plan provides for the curing of a default and maintenance of payments on a residential mortgage under section 1322(b)(5); and

“(B) the debtor has entered into a forbearance agreement or loan modification agreement with the holder or servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) of the mortgage described in subparagraph (A).”.

(2) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act, section 1328 of title 11, United States Code, is amended by striking subsection (i).

(c) PROTECTION AGAINST DISCRIMINATORY TREATMENT.—

(1) IN GENERAL.—Section 525 of title 11, United States Code, is amended by adding at the end the following:

“(d) A person may not be denied relief under sections 4022 through 4024 of the CARES Act (15 U.S.C. 9056, 9057, 9058) because the person is or has been a debtor under this title.”.

(2) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act, section 525 of title 11, United States Code, is amended by striking subsection (d).

(d) CARES FORBEARANCE CLAIMS.—

(1) FILING OF PROOFS OF CLAIMS OR INTERESTS.—Section 501 of title 11, United States Code, is amended by adding at the end the following:

“(f)(1) In this subsection—

“(A) the term ‘CARES forbearance claim’ means a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057);

“(B) the term ‘eligible creditor’ means a servicer (as defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)) with a claim for a Federally backed mortgage loan or a Federally backed multifamily mortgage loan of the debtor that is provided for by a plan under section 1322(b)(5);

“(C) the term ‘Federally backed mortgage loan’ has the meaning given the term in section 4022(a) of the CARES Act (15 U.S.C. 9056(a)); and

“(D) the term ‘Federally backed multifamily mortgage loan’ has the meaning given the term in section 4023(f) of the CARES Act (15 U.S.C. 9057(f)).

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“(2)(A) Only an eligible creditor may file a supplemental proof of claim for a CARES forbearance claim.

“(B) If an underlying mortgage loan obligation has been modified or deferred by an agreement of the debtor and an eligible creditor of the mortgage loan in connection with a mortgage forbearance granted under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057) in order to cure mortgage payments forborne under the forbearance, the proof of claim filed under subparagraph (A) shall include—

“(i) the relevant terms of the modification or deferral;

“(ii) for a modification or deferral that is in writing, a copy of the modification or deferral; and

“(iii) a description of the payments to be deferred until the date on which the mortgage loan matures.”.

(2) ALLOWANCE OF CLAIMS OR INTERESTS.—Section 502(b)(9) of title 11, United States Code, is amended to read as follows:

“(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that—

“(A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide;

“(B) in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required; and

“(C) a CARES forbearance claim (as defined in section 501(f)(1)) shall be timely filed if the claim is filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act (15 U.S.C. 9056, 9057).”.

(3) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act—

(A) section 501 of title 11, United States Code, is amended by striking subsection (f); and

(B) section 502(b)(9) of title 11, United States Code, is amended—

(i) in subparagraph (A), by adding “and” at the end;

(ii) in subparagraph (B), by striking “; and” and inserting a period; and

(iii) by striking subparagraph (C).

(e) MODIFICATION OF PLAN AFTER CONFIRMATION.—

(1) IN GENERAL.—Section 1329 of title 11, United States Code, is amended by adding at the end the following:

“(e)(1) A debtor of a case for which a creditor files a proof of claim under section 501(f) may file a request for a modification of the plan to provide for the proof of claim.

“(2) If the debtor does not file a request for a modification of the plan under paragraph (1) on or before the date that is 30 days after the date on which a creditor files a claim under section 501(f), after notice, the court, on a motion of the court ***3219** or on a motion of the United States trustee, the trustee, a bankruptcy administrator, or any party in interest, may request a modification of the plan to provide for the proof of claim.”.

(2) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act, section 1329 of title 11, United States Code, is amended by striking subsection (e).

(f) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—

(1) IN GENERAL.—Section 365(d) of title 11, United States Code, is amended—

(A) in paragraph (3)—

(i) by inserting “(A)” after “(3)”;

(ii) by inserting “, except as provided in subparagraph (B)” after “such 60-day period”; and

(iii) by adding at the end the following:

“(B) In a case under subchapter V of chapter 11, the time for performance of an obligation described in subparagraph (A) arising under any unexpired lease of nonresidential real property may be extended by the court if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic until the earlier of—

“(i) the date that is 60 days after the date of the order for relief, which may be extended by the court for an additional period of 60 days if the court determines that the debtor is continuing to experience a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic; or

“(ii) the date on which the lease is assumed or rejected under this section.

“(C) An obligation described in subparagraph (A) for which an extension is granted under subparagraph (B) shall be treated as an administrative expense described in section 507(a)(2) for the purpose of section 1191(e).”; and

(B) in paragraph (4), by striking “120” each place it appears and inserting “210”.

(2) SUNSET.—

(A) IN GENERAL.—Effective on the date that is 2 years after the date of enactment of this Act, section 365(d) of title 11, United States Code, is amended—

(i) in paragraph (3)—

(I) by striking “(A)” after “(3)”; and

(II) by striking “, except as provided in subparagraph (B)” after “such 60-day period”; and

(III) by striking subparagraphs (B) and (C); and

(ii) in paragraph (4), by striking “210” each place it appears and inserting “120”.

(B) SUBCHAPTER V CASES FILED BEFORE SUNSET.—Notwithstanding the amendments made by subparagraph (A), the amendments made by paragraph (1) shall apply in any case commenced under subchapter V of chapter 11 of title 11, United States Code, before the date that is 2 years after the date of enactment of this Act.

(g) PREFERENCES.—

(1) IN GENERAL.—Section 547 of title 11, United States Code, is amended—

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(A) in subsection (b), in the matter preceding paragraph (1), by striking “and (i)” and inserting “, (i), and (j)”; and

(B) by adding at the end the following:

“(j)(1) In this subsection:

“(A) The term ‘covered payment of rental arrearages’ means a payment of arrearages that—

“(i) is made in connection with an agreement or arrangement—

“(I) between the debtor and a lessor to defer or postpone the payment of rent and other periodic charges under a lease of nonresidential real property; and

“(II) made or entered into on or after March 13, 2020;

“(ii) does not exceed the amount of rental and other periodic charges agreed to under the lease of nonresidential real property described in clause (i)(I) before March 13, 2020; and

“(iii) does not include fees, penalties, or interest in an amount greater than the amount of fees, penalties, or interest—

“(I) scheduled to be paid under the lease of nonresidential real property described in clause (i)(I); or

“(II) that the debtor would owe if the debtor had made every payment due under the lease of nonresidential real property described in clause (i)(I) on time and in full before March 13, 2020.

“(B) The term ‘covered payment of supplier arrearages’ means a payment of arrearages that—

“(i) is made in connection with an agreement or arrangement—

“(I) between the debtor and a supplier of goods or services to defer or postpone the payment of amounts due under an executory contract for goods or services; and

“(II) made or entered into on or after March 13, 2020;

“(ii) does not exceed the amount due under the executory contract described in clause (i)(I) before March 13, 2020; and

“(iii) does not include fees, penalties, or interest in an amount greater than the amount of fees, penalties, or interest—

“(I) scheduled to be paid under the executory contract described in clause (i)(I); or

“(II) that the debtor would owe if the debtor had made every payment due under the executory contract described in clause (i)(I) on time and in full before March 13, 2020.

“(2) The trustee may not avoid a transfer under this section for—

“(A) a covered payment of rental arrearages; or

“(B) a covered payment of supplier arrearages.”.

(2) SUNSET.—

(A) IN GENERAL.—Effective on the date that is 2 years after the date of enactment of this Act, section 547 of title 11, United States Code, is amended—

***3221**

(i) in subsection (b), in the matter preceding paragraph (1), by striking “, (i), and (j)” and inserting “and (i)”; and

(ii) by striking subsection (j).

(B) CASES FILED BEFORE SUNSET.—Notwithstanding the amendments made by subparagraph (A), the amendments made by paragraph (1) shall apply in any case commenced under title 11, United States Code, before the date that is 2 years after the date of enactment of this Act.

(h) TERMINATION OF UTILITY SERVICES.—

(1) IN GENERAL.—Section 366 of title 11, United States Code, is amended by adding at the end the following:

“(d) Notwithstanding any other provision of this section, a utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment under this section if the debtor—

“(1) is an individual;

“(2) makes a payment to the utility for any debt owed to the utility for service provided during the 20-day period beginning on the date of the order for relief; and

“(3) after the date on which the 20-day period beginning on the date of the order for relief ends, makes a payment to the utility for services provided during the pendency of case when such a payment becomes due.”.

(2) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act, section 366 of title 11, United States Code, is amended by striking subsection (d).

(i) CUSTOMS DUTIES.—

(1) IN GENERAL.—Section 507(d) of title 11, United States Code, is amended—

(A) by striking “, (a)(8)”;

(B) by inserting “or subparagraphs (A) through (E) and (G) of subsection (a)(8)” after “(a)(9)”; and

(C) inserting “or subparagraph” after “such subsection”.

(2) SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act, section 507(d) of title 11, United States Code, is amended—

(A) by inserting “, (a)(8)” before “, or (a)(9)”;

(B) by striking “or subparagraphs (A) through (E) and (G) of subsection (a)(8)”;

(C) by striking “or subparagraph” after “such subsection”.

TITLEXI—WESTERN WATER AND INDIAN AFFAIRS

SEC. 1101. AGING INFRASTRUCTURE ACCOUNT.

Section 9603 of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 510b) is amended by adding at the end the following:

<< 43 USCA § 510b >>

“(d) AGING INFRASTRUCTURE ACCOUNT.—

“(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a special account, to be known as the ‘Aging Infrastructure Account’ (referred to in this subsection as the ‘Account’), to provide funds to, and provide for the

EXHIBIT D

All litigation under the Administrative Procedures Act implicates separation of powers questions, and these lawsuits provide no exception. The power to implement statutes is delegated by Congress to agencies, not to courts, because agencies have several comparative

advantages in making policy judgments. *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2413 (2019).

Unlike courts, agencies are politically accountable: “they are subject to the supervision of the President, who in turn answers to the public.” *Id.* Congress delegates legislative authority explicitly in some circumstances and implicitly in others. *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001). Implicit delegation may occur, as it has here, where it is “apparent from the agency’s generally conferred authority and other statutory circumstances that Congress would expect the agency to be able to speak with the force of law when it . . . fills a space in the enacted law[.]” *Id.*

These proceedings concern a rule adopted by the Small Business Administration (“SBA”) excluding debtors in bankruptcy from participating in the Paycheck Protection Program (the “PPP”). The plaintiffs—Penobscot Valley Hospital and Calais Regional Hospital (the “Hospitals”)—have consistently asked this Court to cast aside the SBA’s rule and declare them eligible to participate in the PPP. The arguments advanced in support of this remedy have evolved over time. What began as a challenge to the SBA’s authority to implement the bankruptcy exclusion, coupled with a claim of unlawful discrimination under 11 U.S.C. § 525, has morphed into an argument that the SBA ran afoul of the procedures outlined in the Administrative Procedures Act (“APA”). Although the Hospitals make detailed arguments under the rubric of the APA on recommittal, their fundamental grievance is what it always has been: they challenge the wisdom of the bankruptcy exclusion and ask the Court to substitute their policy preference for the SBA’s. But it is not for the Judiciary to second-guess a reasonable rule promulgated by an agency in the exercise of the authority delegated by Congress. As such, the Hospitals’ challenge must fail. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 866 (1984) (“When a challenge to an agency construction of a statutory provision,

fairly conceptualized, really centers on the wisdom of the agency’s policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail.”).

I. PROCEDURAL BACKGROUND

These proceedings began on April 27, 2020. Due to the time-sensitive nature of the relief sought by the Hospitals, the Court conducted an expedited trial on May 27 and issued proposed findings and conclusions one week later. Following an objection from the Hospitals under Fed. R. Bankr. P. 9033(b), proceedings commenced in the District Court. With its response to that objection, the SBA filed a declaration that had not been offered in evidence during the trial. The District Court adopted and accepted, in part, this Court’s proposed findings and conclusions. The proceedings were then recommitted to this Court for consideration of certain questions, including the significance of the declaration filed by the SBA.

After recommitment, the Hospitals were granted the opportunity to conduct limited discovery. Based on representations from the Hospitals about the nature and extent of discovery necessary, the Court allowed a discovery period of approximately six weeks. The parties were instructed to contact the Court upon completion of discovery to schedule a further hearing. After several months, the Court convened a status conference and learned that the parties were mired in a discovery dispute. The Court then issued an order resolving that dispute and entertained oral arguments from the parties.

The District Court recommitted a particular aspect of these proceedings to this Court for further consideration—namely, the proposed conclusion that the bankruptcy exclusion is within the bounds of a reasonable interpretation of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), Pub. L. No. 116-136, 134 Stat. 281 (2020). Specifically, this Court is tasked with: (i) resolving the “possible discrepancy” [Dkt. No. 78, p. 6] between the declaration

filed with the District Court (the “Maine Miller Declaration”) and another declaration filed in similar litigation in Vermont (the “Vermont Miller Declaration”); (ii) determining whether the bankruptcy exclusion is a reasonable construction of the CARES Act under the second step of the analysis articulated in Chevron; and (iii) determining whether the bankruptcy exclusion is “arbitrary and capricious” under the standard established in Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

II. PROPOSED FINDINGS AND CONCLUSIONS

To the extent that the District Court adopted and accepted the proposed findings and conclusions issued previously, those findings and conclusions are fully incorporated here. Despite that incorporation, certain information contained in the initial findings and conclusions may be reproduced here for the ease of the reader. Before completing the tasks assigned on recommittal, an orientation is in order, starting with the authority conferred upon the SBA in relation to loans under Section 7(a) of the Small Business Act, canvassing the pertinent provisions of the PPP, tracking through the promulgation of the bankruptcy exclusion, and concluding with a review of the two Miller declarations.¹

A. The Small Business Administration and Section 7(a) Loans Generally

Because Congress tasked the SBA with administering the PPP under a loan program that was in place long before the passage of the CARES Act, “understanding the SBA’s functions and that pre-existing loan program helps put the issues in context.” USF Fed. Credit Union v. Gateway Radiology Consultants, P.A. (In re Gateway Radiology Consultants, P.A.), ---

¹ On recommittal, the Hospitals asked this Court to make additional proposed findings, a number of which straddle or even cross the (sometimes but not always blurry) line separating factual findings from legal conclusions. To the extent that the factual record and the law permit, the Court has made the findings and conclusions requested, and incorporated them below. To the extent that the requested findings and conclusions do not appear below, they lack merit as a matter of law or lack support in the record, as applicable, and the Court therefore declines to make them.

F.3d ---, 2020 WL 7579338, at *2 (11th Cir. Dec. 22, 2020). When it passed the Small Business Act of 1953 (codified as amended at 15 U.S.C. §§ 631-657), Congress declared that “the Government should aid, counsel, assist, and protect insofar as is possible the interests of small-business concerns in order to preserve free competitive enterprise . . . and to maintain and strengthen the overall economy of the Nation.” 15 U.S.C. § 631(a). To carry out these policies, Congress created the SBA, an agency that would serve “under the general direction and supervision of the President[.]” 15 U.S.C. § 633(a), and vested management of the SBA in a single Administrator, to be “appointed from civilian life by the President, by and with the advice and consent of the Senate,” *id.* § 633(b)(1). “The Administration was given extraordinarily broad powers to accomplish [its] important objectives, including that of lending money to small businesses whenever they could not get necessary loans on reasonable terms from private lenders.” SBA v. McClellan, 364 U.S. 446, 447 (1960) (footnote omitted).

Section 7(a) of the Small Business Act empowers the SBA to make loans to small businesses directly or indirectly—through loan guarantees—“to the extent and in such amounts as provided . . . in appropriation Acts[.]” 15 U.S.C. § 636(a). When it comes to these loans, commonly known as Section 7(a) loans, the Administrator has expansive rulemaking authority. The Administrator is generally empowered to “make such rules and regulations as [she] deems necessary to carry out the authority vested in [her,]” 15 U.S.C. § 634(b)(6), and to “take any and all actions . . . when [she] determines such actions are necessary or desirable in making . . . or otherwise dealing with or realizing on loans[.]” *id.* § 634(b)(7). The Administrator also serves on the Loan Policy Board of the SBA, along with the Secretary of Treasury and the Secretary of Commerce, and in that capacity establishes:

general policies (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Administration

and with reference to the coordination of the functions of the Administration with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administration.

15 U.S.C. § 633(d).

In the exercise of its authority to lend under Section 7(a) and to make rules and policies for such lending, the SBA is constrained and guided by the terms of the statute. Among those terms is the requirement that Section 7(a) loans “shall be of such sound value or so secured as reasonably to assure repayment[.]” 15 U.S.C. § 636(a)(6). To ensure that a loan will be “so sound as to reasonably assure repayment[.]” the SBA’s lending criteria involve consideration of nine factors, including the applicant’s credit history. 13 C.F.R. § 120.150. For Section 7(a) loans, the SBA also considers an applicant’s bankruptcy history; applicants are asked to disclose prior bankruptcy filings on Form 1919, the loan application form.

B. The Paycheck Protection Program

The CARES Act became law on March 27, 2020, creating the PPP and nestling it within the existing Section 7(a) framework. *See* Pub. L. No. 116-136, § 1102(a), 134 Stat. 281, 286. As its name suggests, the PPP was designed to keep American workers on payrolls despite the economic impacts of COVID-19. To achieve this objective, the PPP authorized small business loans that would qualify for forgiveness if used to fund specific expenses, including payroll costs, during a defined period. *See* Pub. L. No. 116-136, § 1106(b), 134 Stat. 281, 298.

For PPP loans, the CARES Act amended Section 7(a) of the Small Business Act, 15 U.S.C. § 636(a), in a number of ways, but left other aspects of Section 7(a) in place. Most provisions relating to the PPP were located in a new paragraph at the end of 15 U.S.C. § 636(a). *See* Pub. L. No. 116-136, § 1102(a)(2), 134 Stat. 281, 286. Except as otherwise set forth in that new paragraph—number (36)—Congress provided that “the Administrator may guarantee [PPP]

loans under the same terms, conditions, and processes as a loan made under this subsection”—i.e., subsection (a) of 15 U.S.C. § 636. *See* Pub. L. No. 116-136, § 1102(a)(2), 134 Stat. 281, 287 (codified at 15 U.S.C. § 636(a)(36)(B)). By enacting 15 U.S.C. § 636(a)(36), Congress deviated from some of the terms applicable to other loans made under Section 7(a). *See, e.g.*, 15 U.S.C. § 636(a)(36)(D), (J). But Congress did not suspend for PPP loans the “sound value” requirement generally applicable to Section 7(a) loans under 15 U.S.C. § 636(a)(6).

Although PPP loans were designed to incentivize borrower behavior—i.e., use of the loans to fund payroll and other specified expenses—Congress also contemplated that the loans might not be so used, and might not be forgiven. Either way, the SBA would have some part to play. To the extent that a PPP borrower qualifies for loan forgiveness, the SBA is on the hook to the lender for the amount forgiven, plus accrued interest. *See* 15 U.S.C. § 9005(c)(3). Any portion of a PPP loan not forgiven must be repaid, *see* 15 U.S.C. § 636(a)(36)(K)(ii) (establishing, for unforgiven PPP loans, a minimum maturity of five years and a maximum maturity of ten years from the date of an application for forgiveness), and if the borrower does not pay the lender, the SBA remains on the hook because the SBA guarantees 100% of loans issued under the PPP, *see id.* § 636(a)(2)(F) (providing that the SBA is to “participate in”—or guarantee—100% of PPP loans); *id.* § 636(a)(36)(K)(i) (indicating that unforgiven PPP loan balances “shall continue to be guaranteed by the Administration”).

Congress appropriated a very large, but not unlimited, amount of money for the PPP: \$349 billion. *See* Pub. L. No. 116-136, § 1107(a)(1), 134 Stat. 281, 301. The legislature communicated a sense that these funds be disbursed quickly. The statute contained time constraints relating to the loans themselves: only “covered loans” would be eligible for forgiveness, and covered loans could only be obtained during the “covered period” ending on

June 30, 2020. *See* Pub. L. 116-136, § 1102(a)(2), 134 Stat. 281, 286; Pub. L. 116-136, § 1106, 134 Stat. 281, 298.² Congress also granted the SBA emergency rulemaking authority, providing: “Not later than 15 days after March 27, 2020, the Administrator shall issue regulations to carry out [Title I of the CARES Act] and the amendments made [thereby] without regard to the notice requirements under [5 U.S.C. § 553(b)].” 15 U.S.C. § 9012.

PPP funds are generally processed on a first come, first served basis, and the funds were exhausted quickly. On April 24, 2020, Congress appropriated an additional \$310 billion for PPP loan guarantees. *See* Paycheck Protection and Healthcare Enhancement Act, Pub. L. No. 116-139, § 101(a), 134 Stat. 620 (2020).

C. The Bankruptcy Exclusion

In the meantime, the Administrator used the emergency rulemaking authority conferred by Congress. On April 2, 2020, less than one week after the CARES Act was passed, the Administrator posted an interim final rule regarding the PPP (the “First IFR”) to the SBA’s website. The First IFR explains that in order to apply, an applicant must submit SBA Form 2483, the PPP Application Form, to a lender. Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20,811, 20,814 (Apr. 15, 2020) (to be codified at 13 C.F.R. pt. 120). Among the limited PPP underwriting requirements, the First IFR includes lender review of the borrower certifications contained in Form 2483. *Id.* at 20,815. The Administrator also posted Form 2483 to the SBA’s website on April 2, 2020. Form 2483 states that “if questions (1) or (2) . . . are answered ‘Yes’ the loan will not be approved.” [Dkt. No. 49,

² The “covered period” during which a “covered loan” could be obtained was subsequently extended to December 31, 2020. *See* Paycheck Protection Program Flexibility Act of 2020, Pub. L. 116-142, § 3(a), 134 Stat. 641, 641 (codified at 15 U.S.C. § 636(a)(36)(A)(iii)).

¶ 17.] Question one asks whether the applicant is “presently involved in any bankruptcy[.]” excluding such applicants from participating in the PPP. Id.

The agency action excluding debtors from the PPP occurred with the promulgation of the First IFR and Form 2483, neither of which contain an explanation specifically addressing the bankruptcy exclusion. In a prefatory section, the First IFR observes that the “intent of the Act is that SBA provide relief to America’s small businesses expeditiously[.]” 85 Fed. Reg. 20,811, 20,812. That prefatory section goes on to provide 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?.” SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers’ failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule. The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 C.F.R. 120.10).

85 Fed. Reg. 20,811, 20,812. Among the lending criteria and loan program requirements suspended as to PPP loans, but applicable to other Section 7(a) loans, is the multi-factored analysis identified in 13 C.F.R. § 120.150, including a consideration of the applicant’s credit history, and an evaluation of any prior bankruptcy filings revealed on Form 1919. In place of these considerations, the SBA imposed more streamlined requirements: lender review of the borrower certifications on Form 2483, and disqualification of certain applicants, including those involved in an ongoing bankruptcy.

On April 24, 2020, the Administrator posted a fourth interim final rule (the “Fourth IFR”)

with respect to the PPP on its website.³ The Fourth IFR, which has since been published in the Federal Register, “supplements the previously posted interim final rules with additional guidance.” Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility, 85 Fed. Reg. 23,450, 23,450 (Apr. 28, 2020) (to be codified at 13 C.F.R. pt. 120 & 121). The rule provides the following guidance pertinent to the bankruptcy exclusion:

4. Eligibility of Businesses Presently Involved in Bankruptcy Proceedings

Will I be approved for a PPP loan if my business is in bankruptcy?

No. If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan. If the applicant or the owner of the applicant becomes the debtor in a bankruptcy proceeding after submitting a PPP application but before the loan is disbursed, it is the applicant’s obligation to notify the lender and request cancellation of the application. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes.

The Administrator, in consultation with the Secretary, determined that providing PPP loans to debtors in bankruptcy would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans. In addition, the Bankruptcy Code does not require any person to make a loan or a financial accommodation to a debtor in bankruptcy. The Borrower Application Form for PPP loans (SBA Form 2483) which reflects this restriction in the form of a borrower certification, is a loan program requirement. Lenders may rely on an applicant’s representation concerning the applicant’s or an owner of the applicant’s involvement in a bankruptcy proceeding.

Id. at 23,451.

D. The Miller Declarations

By May and June 2020, litigation was underway in this Court and in courts across the country concerning the legality of the bankruptcy exclusion. In some of the cases, the

³ The Administrator also promulgated second and third interim final rules, neither of which address the bankruptcy exclusion. *See* Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20,817 (Apr. 15, 2020) (to be codified at 13 C.F.R. pt. 121); Additional Eligibility Criteria and Requirements for Certain Pledges of Loans, 85 Fed. Reg. 21,747 (Apr. 20, 2020) (to be codified at 13 C.F.R. pt. 120).

Administrator offered declarations of its Deputy Associate Administrator for Capital Access, John A. Miller. *See* [Dkt. No. 90, Ex. 1 & 2]. In the Maine Miller Declaration—dated June 5, 2020—Mr. Miller explains that the CARES Act was enacted on March 27, 2020 “to provide emergency assistance” to “businesses affected by the COVID-19 emergency.” [Dkt. No. 90, Ex. 1, ¶ 3.] He states that participating lenders began accepting PPP loan applications on April 3, 2020, one week after the CARES Act was passed. *Id.* ¶ 22. Mr. Miller also states that:

SBA determined that the intent of the Act is that SBA provide relief to America’s small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provided good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, small businesses needed to be informed on how to apply for a loan and the terms of the loan under section 1102 of the Act as soon as possible because under the CARES Act as enacted the last day to apply for and receive a loan was June 30, 2020. The Interim Final Rules were issue[d] to allow immediate [implementation] of this program.

Id. ¶ 5. When discussing the bankruptcy exclusion specifically, Mr. Miller states:

The reason for including the bankruptcy exclusion in Form 2483 was that SBA in consultation with Treasury determined that in order to meet the challenges of rescuing the economy from the effects of the Covid-19 virus pandemic, loan assistance authorized by the [CARES] Act had to be provided as expeditiously as possible with as little as possible underwriting. Since a company in bankruptcy required an inquiry into the state of the proceeding and possibly a court order for DIP financing, as well [as] the possible resolution of a host of other issues and the prospect of incurring fees by the lender in monitoring the bankruptcy proceeding, it was determined that the wording of Form 2483 would be expeditious and less likely to slow the administration of the program and less likely to require the expenditure of additional time, effort and other resources. The purpose of a PPP loan is to help small businesses pay their employees and maintain operations to allow them to restart quickly over the next few months. *SBA decided that this purpose would not be served by including all bankruptcies.* Certain creditors, including administrative creditors, could assert claims to the PPP loan funds that would interfere with its authorized uses and the requirements for PPP loan forgiveness. SBA, in consultation with the Department of Treasury, determined there should be one streamlined rule that applies to all debtors in bankruptcy to avoid the need for case by case reviews.

Id. ¶ 17 (emphasis added). Finally, Mr. Miller explains that other than the statute itself, the PPP application form, and the First and Fourth IFRs, there “is no Administrative Record . . . because this was an Interim Final Rule, prepared in order to deliver this much needed assistance to small businesses as expeditiously as possible.” Id. ¶ 23.

The Vermont Miller Declaration—dated May 14, 2020—contains some of the same statements as the Maine Miller Declaration. But in the Vermont Miller Declaration, Mr. Miller offers the following explanation for the bankruptcy exclusion:

The purpose of a PPP loan is to help small businesses pay their employees and maintain operations to allow them to restart quickly over the next few months. *This purpose would not be served in a chapter 11 liquidation or in a chapter 7 case.* Certain creditors, including administrative creditors, could assert claims to the PPP loan funds that would interfere with its authorized uses and the requirements for PPP loan forgiveness. SBA, in consultation with the Department of Treasury, determined there should be one streamlined rule that applies to all debtors in bankruptcy to avoid the need for case by case reviews.

[Dkt. No. 90, Ex. 2, ¶ 21 (emphasis added).]

With these individual pieces of the puzzle laid on the table, the focus can shift to the larger picture: an assessment of how the bankruptcy exclusion holds up under the second step of the Chevron analysis and the arbitrary and capricious framework articulated in State Farm. Before adjusting to that wider lens, however, the significance of the Miller declarations looms in the foreground.

E. The Significance of the Miller Declarations vis-à-vis the Administrative Record

The Hospitals contend that the Miller declarations are post hoc rationalizations that should be ignored. In the Hospitals’ view, this is warranted because the Miller declarations were not generated at the same time as the bankruptcy exclusion or offered at trial, and the reasons they advance in support of the bankruptcy exclusion do not qualify as contemporaneous explanations. The Hospitals also contend that the reasoning in the Vermont Miller Declaration

differs from the reasoning in the Maine Miller Declaration, and that the evolution in the explanations offered over time renders them incredible.

When “reviewing agency action, a court is ordinarily limited to evaluating the agency’s contemporaneous explanation in light of the existing administrative record.” Dep’t of Commerce v. New York, 139 S. Ct. 2551, 2573 (2019). Like many rules, the administrative record rule admits certain exceptions. For example, “[a] reviewing court may accept evidence outside the administrative record where there is a strong showing of bad faith or improper behavior by agency decisionmakers, or where there is a failure to explain administrative action [so] as to frustrate effective judicial review.” Murphy v. Comm’r of Internal Revenue, 469 F.3d 27, 31 (1st Cir. 2006) (citations omitted) (quotation marks omitted). “The administrative record may be supplemented, if necessary, by affidavits, depositions, or other proof of an explanatory nature.” Sierra Club v. Marsh, 976 F.2d 763, 772 (1st Cir. 1992) (quotation marks omitted). “The new material, however, should be explanatory of the decisionmakers’ action at the time it occurred. No new rationalizations for the agency’s decision should be included, and if included should be disregarded.” Id. at 772-73 (citations omitted).

Here, there has been no showing of bad faith or improper behavior on the part of the SBA. However, given the exigencies of the Administrator’s rulemaking efforts in relation to the PPP, the supplementary explanation contained in the Fourth IFR is appropriately included in the administrative record. In the extraordinary circumstances surrounding the passage of the CARES Act, and the congressional directive that the Administrator get the PPP off the ground immediately to provide economic relief to struggling businesses and their employees, the lack of a perfectly contemporaneous explanation is far from troubling. There is no suggestion that the explanation offered in the Fourth IFR is simply a “convenient litigating position” and the time-

[Dkt. No. 78, p. 5.] Specifically, the District Court observed:

[Dkt. No. 78, p. 5] (footnote omitted). Because the explanation offered in the Maine Miller Declaration is consistent with that included in the Fourth IFR, the Maine Miller Declaration appropriately supplements the administrative record.⁴

⁴ Even if the Maine Miller Declaration were excluded from consideration, the proposed disposition would be unaffected. This Court would still conclude, on a record consisting solely of Form 2483 and the First and Fourth IFRs, that the bankruptcy exclusion is a reasonable construction of the statute and is neither arbitrary nor capricious.

bankruptcy exclusion. *See* [Dkt. No. 1]. The closest the Hospitals came to developing a State Farm style argument was in their pretrial memorandum where they asserted that the record was “sufficient to determine that the Administrator has acted in an arbitrary and capricious manner, in violation of 5 U.S.C. § 706(2)(A).” [Dkt. No. 43, ¶ 18.] They also urged the Court to use “all of the tools necessary to address the concerns of the Administrator” (as expressed in the Fourth IFR) and argued that the record would not show that the Administrator “engaged in a thoughtful, deliberative process” with respect to the bankruptcy exclusion or in “any review whatsoever of the financial health or viability of any company seeking PPP funds.” *Id.* In the proposed findings and conclusions issued in June 2020, the Court attempted to address the arguments developed by the parties. Since then, the Administrator has supplemented the administrative record with the Maine Miller Declaration, and the Hospitals, in response to that declaration, have made new, detailed arguments under the State Farm rubric.

Among other things, this Court is tasked with resolving the “possible discrepancy” between the Maine Miller Declaration and the Vermont Miller Declaration. [Dkt. No. 78, p. 6.] When discussing the bankruptcy exclusion in the Maine Miller Declaration, Mr. Miller states: “The purpose of a PPP loan is to help small businesses pay their employees and maintain operations to allow them to restart quickly over the next few months. SBA decided that this purpose would not be served by including all bankruptcies.” [Dkt. No. 90, Ex. 1, ¶ 17.] In the Vermont Miller Declaration, executed several weeks prior to the Maine Miller Declaration, Mr. Miller states: “The purpose of a PPP loan is to help small businesses pay their employees and maintain operations to allow them to restart quickly over the next few months. This purpose would not be served in a chapter 11 liquidation or in a chapter 7 case.” [Dkt. No. 90, Ex. 2, ¶ 21.] After these statements, both declarations state: “Certain creditors, including administrative

creditors, could assert claims to the PPP loan funds that would interfere with its authorized uses and the requirements for PPP loan forgiveness. SBA, in consultation with the Department of Treasury, determined there should be one streamlined rule that applies to all debtors in bankruptcy to avoid the need for case by case reviews.” [Dkt. No. 90, Ex. 1, ¶ 17 & Ex. 2, ¶ 21.]

A discrepancy may be a “difference” or an “inconsistency.” *See Webster’s New World College Dictionary* 392 (3d ed.). There is no inconsistency between the Miller declarations; they are not identical, but they are not in conflict either. Saying that the purpose of the PPP would not be served in a chapter 11 liquidation or a chapter 7 case (as Mr. Miller states in the Vermont Miller Declaration) does not imply or suggest that the purpose of the PPP would be served in other types of bankruptcy cases. That is the inference upon which the Hospitals’ inconsistency theory rests. The statement in the Vermont Miller Declaration—that the purpose of the PPP would not be served in chapter 7 or a liquidating chapter 11—is merely a subset of the broader statement in the Maine Miller Declaration—that the purpose of the PPP would not be served by including all bankruptcies. The difference between these two statements does not cause the Court to view the Miller declarations with any degree of skepticism. A person might say on a Monday: “I am gluten sensitive. I have difficulty with marble rye, so I avoid that type of bread.” Several days later, that person might say: “I am gluten sensitive. I have difficulty with bread, and therefore avoid all bread.” A listener, hearing the more specific first statement and then the more general second statement, would not question the person’s credibility simply because the statements were not identical. In both cases, the person with the gluten sensitivity would be tying a difficult decision—the decision to avoid bread—to the sensitivity. That same sort of reasoning appears in the Miller declarations; the distinction between the two declarations is not problematic in the way the Hospitals suggest.

F. The Analysis Under the Second Step of Chevron and State Farm

The District Court previously adopted this Court’s proposed conclusion under the first step of Chevron—namely, that Congress did not explicitly say whether debtors in bankruptcy were eligible to participate in the PPP, delegating rulemaking authority on that issue to the SBA. In the second step of the Chevron analysis, the court considers whether the challenged agency decision “is based on a permissible construction of the statute.” Chevron, 467 U.S. at 843 (footnote omitted).

If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.

Id. at 843-44 (footnotes omitted).⁵

As the District Court stated, although the inquiry under the second step of Chevron may overlap somewhat with the question of whether the agency decision was arbitrary or capricious under the APA, the overlap is incomplete. [Dkt. No. 78, p. 6 (citing River St. Donuts, LLC v. Napolitano, 558 F.3d 111, 117 (1st Cir. 2009)).] At oral argument, the Hospitals signaled agreement with the District Court’s view, stressing certain aspects of the APA analysis, but

⁵ The Hospitals did not ask the Court to apply the less deferential framework supplied by Skidmore v. Swift & Co., 323 U.S. 134 (1944). Had such a request been made, it would have been denied. “The Chevron analysis applies because Congress delegated authority to the SBA to make rules carrying the force of law and the SBA exercised that authority in issuing the [bankruptcy exclusion].” USF Fed. Credit Union v. Gateway Radiology Consultants, P.A. (In re Gateway Radiology Consultants, P.A.), --- F.3d ---, 2020 WL 7579338, at *8 n.8 (11th Cir. Dec. 22, 2020) (citing United States v. Mead Corp., 533 U.S. 218, 229-30 (2001)).

indicating that their arguments under Chevron and the APA were basically one and the same.

For this reason, the discussion centers on the standard set forth in the text of the APA:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of [Title 5] or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

5 U.S.C. § 706.

The standard prescribed by section 706(2)(E) cropped up at oral argument when the Hospitals argued that the SBA is saddled with the burden of showing that the bankruptcy exclusion is supported by “substantial evidence.” For this proposition, the Hospitals cited State Farm and Allentown Mack Sales and Serv., Inc. v. Nat’l Labor Relations Bd., 522 U.S. 359 (1998). These decisions are not on point. In Allentown Mack, the agency decision was governed by a statute separate from the APA indicating that the agency’s findings of fact, if supported by substantial evidence, would be conclusive. *See id.* at 377 (referencing 29 U.S.C. § 160(e)). The agency decision also involved on-the-record factfinding, governed by 5 U.S.C. § 706(2)(E). Similarly, in State Farm, the substantial evidence standard applied where “Congress required a record of the rulemaking proceedings to be compiled and submitted to a reviewing

court, 15 U.S.C. § 1394, and intended that agency findings under the [applicable statute] would be supported by substantial evidence on the record considered as a whole.” State Farm, 463 U.S. at 43-44 (referencing the applicable legislative history). The bankruptcy exclusion, by contrast, was not adopted pursuant to a statute requiring the SBA to conform to the substantial evidence standard, and the rulemaking process did not involve on-the-record factfinding or a hearing under 5 U.S.C. §§ 556 or 557. *Cf.* 5 U.S.C. § 706(2)(E).

The Hospitals have also invoked section 706(2)(A), asserting that the SBA acted in an “arbitrary and capricious” manner in adopting the bankruptcy exclusion.⁶ In 1983, the Supreme Court provided the following explication of this standard:

The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. In reviewing that explanation, [the court] must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies: [The court] may not supply a reasoned basis for the agency’s action that the agency itself has not given. [The court] will, however, uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned.

State Farm, 463 U.S. at 43 (citations omitted) (quotation marks omitted).

How does the bankruptcy exclusion hold up when this standard is applied? In the First IFR, the Administrator stressed that the CARES Act had been passed to provide “emergency

⁶ Countless courts, litigants, and commentators have referred to the “arbitrary and capricious” standard. This Court will follow suit, even though a natural reading of the APA instructs the court to set aside agency action that is either arbitrary or capricious. *See* 5 U.S.C. § 706(2)(A) (“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”).

assistance” to businesses and determined that the legislature had intended “that SBA provide relief to America’s small businesses expeditiously.” 85 Fed. Reg. 20,811, 20,811. To provide that expeditious relief, the SBA streamlined its lending criteria and created an application process that would allow lenders to underwrite PPP loans by relying on borrower certifications on Form 2483, including the certification regarding bankruptcy status. Later, in the Fourth IFR, the Administrator again emphasized the streamlined process that permitted lenders to “rely on an applicant’s representation concerning the applicant’s . . . involvement in a bankruptcy proceeding.” 85 Fed. Reg. 23,450, 23,451. The Administrator also supplemented this need-for-speed rationale with two other considerations: First, the Administrator stated that, after consulting with the Secretary of the Treasury, she had determined “that providing PPP loans to debtors in bankruptcy would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans.” *Id.* Second, the Administrator observed that “the Bankruptcy Code does not require any person to make a loan or a financial commitment to a debtor in bankruptcy.” *Id.*

As previously noted, the Maine Miller Declaration is consistent with the Fourth IFR. In that declaration, Mr. Miller reiterated that debtors were categorically excluded from the PPP in order to streamline and expedite the underwriting and lending process:

Since a company in bankruptcy required an inquiry into the state of the proceeding and possibly a court order for DIP financing, as well as the possible resolution of a host of other issues and the prospect of the incurring of fees by the lender in monitoring the bankruptcy proceeding, it was determined that the wording of Form 2483 would be expeditious and less likely to slow the administration of the program and less likely to require the expenditure of additional time, effort and other resources.

[Dkt. No. 90, Ex. 1, ¶ 17.] Mr. Miller also elaborated on the Administrator’s concerns about the risk of “unauthorized” use of the funds or non-repayment of unforgiven loans if debtors in

bankruptcy were to participate in the PPP, explaining that “[c]ertain creditors, including administrative creditors, could assert claims to the PPP loan funds that would interfere with its authorized uses and the requirements for PPP loan forgiveness.” *Id.* Finally, Mr. Miller stated that purpose of the PPP—helping small businesses pay employees and maintain operations—would not be served by including all bankruptcies in the program, and that the Administrator had decided to apply a bright-line rule “to avoid the need for case by case reviews.” *Id.*

The Fourth IFR and the Maine Miller Declaration reflect that the bankruptcy exclusion was the product of reasoned decision making. When deciding whether to make PPP loans available to debtors, the Administrator appropriately looked to the CARES Act as the source of the relevant factors. *See Brewer v. Madigan*, 945 F.2d 449, 457 (1st Cir. 1991) (“The enabling statute . . . is the principal source of relevant factors to be considered by the agency in promulgating regulations.”); *see also Judulang v. Holder*, 565 U.S. 42, 55 (2011) (stating, in an APA challenge to an action by the Board of Immigration Appeals, that the BIA, tasked with considering “relevant factors,” was required to consider “the purposes of the immigration laws or the appropriate operation of the immigration system”). These factors are identified in the administrative record, as supplemented with the Maine Miller Declaration. The record also contains an explanation that provides a rational connection between the factors the Administrator considered and the decision to exclude all debtors in bankruptcy from the PPP.

The CARES Act and the circumstances surrounding its enactment were truly extraordinary, and Congress clearly communicated the need for speedy action, granting the Administrator only fifteen days to issue regulations, dispensing with the notice-and-comment procedures that would otherwise apply to those regulations, and imposing a cut-off date for PPP applications of June 30, 2020. The Administrator did not err in concluding that the legislature

had tasked the SBA with administering the PPP expeditiously. To implement this directive, the SBA decided to streamline the lending and underwriting process, allowing lenders to rely on borrower certifications. The SBA further simplified the process by adopting a bright-line rule rendering debtors in bankruptcy ineligible, obviating the need for a lender or the SBA to review the circumstances of individual debtors and to monitor ongoing bankruptcy cases. The bankruptcy exclusion was based, in part, on the need for speedy loan processing communicated by Congress.

The Hospitals resist this conclusion, asserting that there is nothing in the administrative record—no data, facts, or studies—that explains how the process of making or guaranteeing PPP loans would be bogged down by permitting debtors to participate. In their view, the SBA should have, within the fifteen-day rulemaking window, solicited input or sought an expert opinion about how cumbersome it would have been to include debtors in bankruptcy in the PPP. The Hospitals assert that the administrative record should stand on its own, without any assistance from common sense or generalized conclusions about lending in bankruptcy. The Court disagrees. Because Congress dispensed with the notice-and-comment procedures prescribed by 5 U.S.C. § 553 and required the Administrator to promulgate rules within fifteen days, the Court does not fault the SBA for failing to seek expert opinions or to conduct hearings. These are the sorts of activities normally undertaken during the notice-and-comment process. *See* 5 U.S.C. § 553(c). And, contrary to the Hospitals' beliefs, common sense can appropriately play a role in agency rulemaking. *See, e.g., ABC Aerolíneas, S.A. de C.V. v. U.S. Dep't of Transp.*, 747 F. App'x 856, 870 (D.C. Cir. 2018); *Van Hollen v. Fed. Election Comm'n*, 811 F.3d 486, 497 (D.C. Cir. 2016). This is especially true here, where that commonsense insight—that lending may be more complex and risky in the bankruptcy context—is bolstered by the Administrator's apparent

awareness of the content of the United States Bankruptcy Code, specifically 11 U.S.C. § 364 (concerning the terms under which the trustee, or a debtor with powers of a trustee, may obtain postpetition credit) and 11 U.S.C. § 365(c)(2) (prohibiting the trustee from assuming a contract to make a loan to or for the benefit of the debtor).

The SBA also tethered the bankruptcy exclusion to a determination that there was an “unacceptably high risk” that a debtor in bankruptcy might use PPP funds for “unauthorized purposes” or fail to repay an unforgiven loan. 85 Fed. Reg. 23,450, 23,451. The Maine Miller Declaration provides further insight, explaining that the SBA perceived a risk that creditors in a bankruptcy case, including administrative creditors, could assert claims to PPP funds, interfering with the intended uses of those funds. [Dkt. No. 90, Ex. 1, ¶ 17.] Mr. Miller also stated that the purpose of the PPP was “to help small businesses pay their employees and maintain operations” and that the SBA “decided that this purpose would not be served by including all bankruptcies.” Id. These statements each relate to the purpose of the PPP generally, and the intended uses of PPP funds, more specifically. *See* 15 U.S.C. § 9005(b) (detailing the uses of PPP loan proceeds that render the loan forgivable, in whole or in part). This line of reasoning also hinges on certain generalizations about lending to debtors in bankruptcy.

The CARES Act requires all PPP applicants to certify that they are experiencing some degree of financial distress related to the uncertainty created by COVID-19. *See* 15 U.S.C. § 636(a)(36)(G)(i)(I) (requiring PPP applicants to certify “that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient”). This degree of financial distress is a PPP baseline. But, when it came to debtors in bankruptcy, the SBA perceived an additional risk that PPP loan funds might not be used for their intended purposes—e.g., to cover payroll—and might instead be gobbled up by administrative

creditors. The SBA apparently perceived that debtors, as a group, were more likely than non-debtors to be suffering from financial distress unrelated to COVID-19 and teetering on the verge of ceasing operations. This is a fair, commonsense generalization.

The Hospitals counter this generalization with specificity, asserting that they are, in fact, attempting to reorganize. That is all very well, but the SBA simply did not have the luxury of considering the particulars of individual bankruptcy cases. And many reorganizations do fail despite the debtors' best efforts. The Bankruptcy Code provides a mechanism by which a chapter 11 reorganization may be converted to a liquidation, *see* 11 U.S.C. § 1112, in which any unencumbered assets would be distributed in accordance with the waterfall contained in 11 U.S.C. § 726. Any PPP funds remaining with the estate upon conversion might not be used to fund payroll or other operating expenses that would render the loan forgivable, but instead could be paid to the trustee, professionals employed by the trustee, or a host of other chapter 7 administrative expenses. Although a PPP loan might qualify for priority if obtained pursuant to an order under 11 U.S.C. § 364(b) or (c), the loan would only be repaid in a liquidation to the extent that any funds remaining with the estate were (i) unencumbered and (ii) not subject to a claim of higher priority. Even if a PPP loan obtained administrative expense status during the chapter 11 case, if the case later converted to a chapter 7 case, the administrative expenses of the chapter 7 case would take priority over the administrative expenses of the chapter 11 case. *See* 11 U.S.C. §§ 507(a)(2), 726(b). The reality is that the Hospitals pose a false dichotomy: lending to debtors who are reorganizing in chapter 11 is relatively safe and simple (and therefore those debtors should not have been excluded from the PPP) whereas lending to chapter 7 debtors and debtors liquidating in chapter 11 cases would not promote the purposes of the PPP (and therefore the SBA could have properly excluded only those debtors). The Court does not perceive that the

distinction is quite so stark.⁷ If PPP funds were not used for their intended purposes and were instead used to cover the expenses of a liquidation, the PPP loan would not be forgiven, and the SBA would be liable on its guarantee of the unforgiven loan balance in the event of non-payment. The Bankruptcy Code gives rise to the prospect that a reorganization may, at any time, become a liquidation, and liquidation would not further the purposes of the PPP.⁸ The SBA did not err in determining that there was a risk that PPP loan proceeds might be diverted to purposes not intended by the CARES Act in a bankruptcy case, and that the loan, if not forgiven, might not be repaid. The SBA did not act arbitrarily or capriciously in deciding that debtors should be excluded from the program due to that risk.

The Hospitals resist this conclusion too, asserting that the SBA relied on factors that Congress did not intend the agency to consider. The Hospitals aver that Congress removed all underwriting criteria for the PPP, pointing to the part of the statute requiring a PPP applicant to certify that the loan is necessary to sustain continued operations. *See* 15 U.S.C. § 636(a)(36)(G)(i)(I). The Hospitals further assert that Congress did not intend the SBA to

⁷ This conclusion is bolstered, to a limited extent, by the recent amendments to the PPP included in the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020). In that legislation, Congress amended 11 U.S.C. § 364 by adding a new subsection (g). Pub. L. No. 116-620, § 320, 134 Stat. 1182, 2015. Under that subsection, a bankruptcy court may authorize a trustee or a debtor in possession in three types of cases to obtain a loan under 15 U.S.C. § 636(a)(36), with such a loan to be treated as a debt to the extent the loan is not forgiven, with priority equal to a claim of the kind specified in 11 U.S.C. § 364(c)(1). Pub. L. No. 116-620, § 320, 134 Stat. 1182, 2015. Notably, however, this amendment is only to take effect if and when the Administrator submits to the Director of the Executive Office for the United States Trustee a determination that any such debtor would be eligible for a loan under section 636(a)(36). Pub. L. No. 116-620, § 320, 134 Stat. 1182, 2016. This discretion now expressly conferred on the Administrator does not extend to chapter 11 debtors generally; it applies only to subchapter V cases (which are a subset of chapter 11 cases), chapter 12 cases, and chapter 13 cases.

⁸ Although the Hospitals' chapter 11 cases could not be converted to chapter 7 without their consent, *see* 11 U.S.C. § 1112(c), the risk of reorganizational failure is not entirely obviated by their nonprofit status. Even a chapter 11 case commenced by a nonprofit remains subject to dismissal under 11 U.S.C. § 1112(b). The point is, not all chapter 11 reorganizations are successful.

consider an applicant's ability to repay an unforgiven PPP loan, pointing to the section of the statute that eliminated the requirements of collateral and a personal guarantee. *See* 15 U.S.C. § 636(a)(36)(J). In the Court's view, the Hospitals read too much into these specific provisions and too little into the other provisions of the PPP. Congress did not suspend for PPP loans the sound value requirement generally applicable to Section 7(a) loans, and it authorized the SBA to guarantee PPP loans on the same terms and conditions as other Section 7(a) loans, except as otherwise provided in 15 U.S.C. § 636(a)(36). *See id.* § 636(a)(36)(B). Yes, there are indications that the loans were to be used for forgivable purposes, but there were also statutory provisions for unforgiven loan balances. The SBA dutifully complied with the parts of the statute cited by the Hospitals, while continuing to impose a minimal, streamlined underwriting standard—a targeted effort to ensure that the loans would either be forgiven or repaid. In doing so, the SBA did not rely on factors which Congress did not intend the agency to consider.

The SBA asserts that the bankruptcy exclusion was justified as an effort to fulfill the statutory sound value requirement. The Hospitals urge the Court to disregard this assertion for two reasons. First, they point out that the Administrator stipulated that the SBA does not analyze PPP applications to determine whether a loan to a particular applicant would be of sound value. Second, the Hospitals note that the sound value requirement does not expressly surface as part of the rationale offered in the Fourth IFR or the Maine Miller Declaration. The stipulation raised by the Hospitals does not have the significance they ascribe to it. Instead, the stipulation simply underscores that the SBA decided to streamline PPP loan processing. As for the Hospitals' timeliness complaints, the Court cannot disregard the fact that sound value is a component of the statutory PPP calculus. Stated differently, the sound value requirement is hard-wired in the statute such that it cannot be brushed aside. When evaluating whether the SBA acted arbitrarily

and capriciously by adopting the bankruptcy exclusion, the Court is tasked with considering whether the SBA relied on factors that Congress did not intend the agency to consider. The SBA's sound value argument properly arises in this context, in response to the Hospitals' contention that Congress eliminated all underwriting requirements and did not intend the SBA to consider how PPP loan funds would be used or whether the loans would be repaid.

The Hospitals' next argument fares no better. They say that the SBA failed to consider the protections that the Bankruptcy Code might have offered to accommodate the SBA's concerns about extending PPP loans to debtors. In the Hospitals' view, these bankruptcy protections include: (a) the requirement that the debtor provide notice to interested parties prior to a hearing under 11 U.S.C. § 364; (b) a chapter 11 debtor's obligation to file monthly operating reports on the docket, thereby providing transparency about the use of PPP funds; (c) the bankruptcy court's ability to order the debtor to segregate PPP funds from other funds; (d) the court's ability to hold a debtor in contempt for unauthorized uses of PPP funds; and (e) the SBA's ability to secure a priority claim under 11 U.S.C. § 507. Perhaps these protections might have ameliorated some of the SBA's concerns about PPP lending in the bankruptcy setting. It is possible that some other rational choice might have been made in light of the SBA's concerns. But an agency is not generally required to "consider all policy alternatives in reaching a decision." State Farm, 463 U.S. at 51. The Court's task is not to second-guess, but rather to determine whether the bankruptcy exclusion was supported by adequate reasoning. *See* Chevron, 467 U.S. at 843 n.11 ("The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding."). The SBA did not act arbitrarily or capriciously by failing to consider the ways in which a PPP loan to

a debtor could have been structured. There was nothing in the CARES Act requiring the agency to consider these aspects of the Bankruptcy Code. And, for the reasons already discussed, the SBA was pursuing a streamlined process. Invoking these bankruptcy protections would have been far from streamlined, requiring involvement on the part of the SBA or the lender in thousands of individual bankruptcy cases.

Finally, the Hospitals insist that there may be some (or even many) cases where a PPP recipient outside of bankruptcy is less creditworthy than a debtor in a bankruptcy case. They make sweeping arguments about the how the statute should operate based on the Hospitals' own circumstances, as if all debtors attempting to reorganize under chapter 11 have similar circumstances. That is simply not the case. Yes, one could find a recipient of a PPP loan outside of bankruptcy that is less creditworthy than the Hospitals. That does not mean that the SBA acted arbitrarily or capriciously when it acted quickly based on a commonsense generalization about lending to debtors in cases under Title 11. The Hospitals identify the problem with generalizations: they are not universally true. Some PPP borrowers outside of bankruptcy likely posed greater credit risks than some debtors in bankruptcy. But because of the pressure to promulgate a rule that would result in expeditious lending, and because of the permissibility of discriminating against debtors in lending under 11 U.S.C. § 525, a universal, one-size-fits-all rule was justified, notwithstanding the shortcomings of generalized risk assessment.

III. FINAL CONSIDERATIONS

Although the rules promulgated by executive agencies are not immune from judicial review, some amount of deference is generally warranted. But how much? Where, as here, the challenged rule does not represent a departure from prior practice and where the agency

promulgated the challenged rule under enormous pressure and statutory deadlines, the amount of deference should be at its zenith.

The Hospitals assert that the bankruptcy exclusion does not pass the State Farm test because it is not supported by any facts, data, or evidence. They read too much into State Farm without accounting for the significant distinctions between the rulemaking process that Congress prescribed in that case and the process prescribed here. In State Farm, the regulation at issue was a rule requiring manufacturers to install passive restraints in vehicles to protect vehicle occupants in the event of a collision. 463 U.S. at 34. The regulation, adopted after lengthy proceedings, required vehicle manufacturers to install either of two passive restraint devices: airbags or automatic seatbelts. Id. at 34-37. After the regulation was adopted, the agency determined that seatbelts would not accomplish the anticipated safety benefits because many individuals would detach them. Id. at 38. Based on this determination, and while continuing to acknowledge the effectiveness of airbags, the agency entirely rescinded the passive restraint requirement without considering an amendment to the regulation that would have required vehicle manufacturers to install airbags. *See id.* at 46-48. Under the circumstances, the Supreme Court deemed the rescission arbitrary and capricious, concluding that the mandatory passive restraint rule could not be abandoned without any consideration of an airbag-only requirement given the agency's determination that airbags remained cost-beneficial, life-saving technology. Id. at 48.

Although State Farm articulates the applicable test, its holding is largely inapposite. In State Farm, the agency action at issue was the rescission of a preexisting rule. The statute governing the agency specifically required it to compile a record of its rulemaking proceedings, and the applicable legislative history manifested congressional intent that the agency's findings be supported by "substantial evidence." The bankruptcy exclusion, by contrast, appeared in the

promulgation of a new rule and the statute authorizing the rule manifested the legislature's intent that the SBA dispense with ordinary rulemaking processes and act with alacrity.

The SBA did not engage in factfinding in any typical sense. No hearings were convened, and no studies were conducted. No statements from the public or subject matter experts were solicited or considered. One can easily imagine the outcry that would have ensued if, following the adoption of the CARES Act, the SBA had conducted studies or gathered statements before promulgating the PPP application form. Under the circumstances, the Court is not troubled that the SBA did not marshal the type of information one might ordinarily classify as "evidence" before adopting the bankruptcy exclusion.

The Hospitals do not contest the need for the SBA to have acted quickly. They do nitpick the manner in which the SBA reached its decision. But their real quarrel relates to the SBA's decision on the merits, which they view as unfair and discriminatory. As for discrimination, the Court has already determined that 11 U.S.C. § 525 does not protect the Hospitals from the sort of discrimination that occurred here. In other words, from a bankruptcy perspective, the exclusion of debtors from the PPP was a lawful choice. That conclusion—that section 525 is not applicable here—bears, to a certain extent, on the fairness of the SBA's decision. Other aspects of Title 11 also bear on the fairness of the bankruptcy exclusion. As the SBA observed, lending to debtors (in any type of bankruptcy case) is purely voluntary: no debtor can force a lender to make a postpetition loan. That reality reflects the nuances of lending to debtors in bankruptcy.

The viability of the bankruptcy exclusion under the APA has been extensively litigated in bankruptcy and district courts across the country. Some courts have upheld the exclusion; others have struck it down. In this Court's view, the bankruptcy exclusion was a reasonable choice that cannot be fairly depicted as arbitrary or capricious. The decisions that reach the contrary

conclusion suffer from a fatal flaw; they ultimately substitute a judicial determination for that of the SBA. That is precisely what the Hospitals are asking the Court to do here; the ask is revealed by the nature of the remedy requested. For the alleged violation of the APA, the Hospitals do not seek the ordinary remedy of remand to the agency for further investigation or new rulemaking. Instead, they ask the Court to compel the SBA to pay to the Hospitals the full amount of the PPP loans they were denied.

Although this Court would likely have crafted a different rule if asked to write on a blank slate, that is not the task at hand. Because the SBA engaged in reasoned decision making and the bankruptcy exclusion is a permissible construction of the enabling legislation, the Court must defer to that decision.

Date: January 12, 2021



Michael A. Fagone
United States Bankruptcy Judge
District of Maine

EXHIBIT E



PPP Loan Forgiveness Calculation Form

Business Legal Name ("Borrower")	DBA or Tradename, if applicable	
Business Address	Business TIN (EIN, SSN)	Business Phone
		() -
	Primary Contact	E-mail Address

SBA PPP Loan Number: _____ Lender PPP Loan Number: _____

PPP Loan Amount: _____ PPP Loan Disbursement Date: _____

Employees at Time of Loan Application: _____ Employees at Time of Forgiveness Application: _____

EIDL Advance Amount: _____ EIDL Application Number: _____

Payroll Schedule: The frequency with which payroll is paid to employees is:

☐ Weekly ☐ Biweekly (every other week) ☐ Twice a month ☐ Monthly ☐ Other _____

Covered Period: _____ to _____

Alternative Payroll Covered Period, if applicable: _____ to _____

If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here: ☐

Forgiveness Amount Calculation:

Payroll and Nonpayroll Costs

Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10): _____

Line 2. Business Mortgage Interest Payments: _____

Line 3. Business Rent or Lease Payments: _____

Line 4. Business Utility Payments: _____

Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions

Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3): _____

Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5: _____

Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13): _____

Potential Forgiveness Amounts

Line 8. Modified Total (multiply line 6 by line 7): _____

Line 9. PPP Loan Amount: _____

Line 10. Payroll Cost 60% Requirement (divide line 1 by 0.60): _____

Forgiveness Amount

Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10): _____



By Signing Below, You Make the Following Representations and Certifications on Behalf of the Borrower:

The authorized representative of the Borrower certifies to all of the below by **initialing** next to each one.

- _____ The dollar amount for which forgiveness is requested:
- was used to pay costs that are eligible for forgiveness (payroll costs to retain employees; business mortgage interest payments; business rent or lease payments; or business utility payments);
 - includes all applicable reductions due to decreases in the number of full-time equivalent employees and salary/hourly wage reductions;
 - includes payroll costs equal to at least 60% of the forgiveness amount;
 - if a 24-week Covered Period applies, does not exceed 2.5 months' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$20,833 per individual; and
 - if the Borrower has elected an 8-week Covered Period, does not exceed 8 weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual.
- _____ I understand that if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges.
- _____ The Borrower has accurately verified the payments for the eligible payroll and nonpayroll costs for which the Borrower is requesting forgiveness.
- _____ I have submitted to the Lender the required documentation verifying payroll costs, the existence of obligations and service (as applicable) prior to February 15, 2020, and eligible business mortgage interest payments, business rent or lease payments, and business utility payments.
- _____ The information provided in this application and the information provided in all supporting documents and forms is true and correct in all material respects. I understand that knowingly making a false statement to obtain forgiveness of an SBA-guaranteed loan is punishable under the law, including 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- _____ The tax documents I have submitted to the Lender are consistent with those the Borrower has submitted/will submit to the IRS and/or state tax or workforce agency. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of ensuring compliance with PPP requirements and all SBA reviews.
- _____ I understand, acknowledge, and agree that SBA may request additional information for the purposes of evaluating the Borrower's eligibility for the PPP loan and for loan forgiveness, and that the Borrower's failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower's loan forgiveness application.
- _____ If the Borrower has checked the box for FTE Reduction Safe Harbor 1 on PPP Schedule A, the Borrower was unable to operate between February 15, 2020 and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

The Borrower's eligibility for loan forgiveness will be evaluated in accordance with the PPP regulations and guidance issued by SBA through the date of this application. SBA may direct a lender to disapprove the Borrower's loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan.

Signature of Authorized Representative of Borrower

Date

Print Name

Title



PPP Schedule A

PPP Schedule A Worksheet, Table 1 Totals

Line 1. Enter Cash Compensation (Box 1) from PPP Schedule A Worksheet, Table 1: _____

Line 2. Enter Average FTE (Box 2) from PPP Schedule A Worksheet, Table 1: _____

Line 3. Enter Salary/Hourly Wage Reduction (Box 3) from PPP Schedule A Worksheet, Table 1:
If the average annual salary or hourly wage for each employee listed on the PPP
Schedule A Worksheet, Table 1 during the Covered Period or the Alternative Payroll
Covered Period was at least 75% of such employee's average annual salary or hourly
wage between January 1, 2020 and March 31, 2020, check here ☐ and enter **0** on line 3. _____

PPP Schedule A Worksheet, Table 2 Totals

Line 4. Enter Cash Compensation (Box 4) from PPP Schedule A Worksheet, Table 2: _____

Line 5. Enter Average FTE (Box 5) from PPP Schedule A Worksheet, Table 2: _____

Non-Cash Compensation Payroll Costs During the Covered Period or the Alternative Payroll Covered Period

Line 6. Total amount paid or incurred by Borrower for employer contributions for employee health insurance: _____

Line 7. Total amount paid or incurred by Borrower for employer contributions to employee retirement plans: _____

Line 8. Total amount paid or incurred by Borrower for employer state and local taxes assessed on employee
compensation: _____

Compensation to Owners

Line 9. Total amount paid to owner-employees/self-employed individual/general partners: _____
This amount may not be included in PPP Schedule A Worksheet, Table 1 or 2. If there is
more than one individual included, attach a separate table that lists the names of and
payments to each.

Total Payroll Costs

Line 10. Payroll Costs (add lines 1, 4, 6, 7, 8, and 9): _____

Full-Time Equivalency (FTE) Reduction Calculation

If you satisfy **any** of the following three criteria, check the appropriate box, skip lines 11 and 12, and enter **1.0** on line 13; otherwise,
complete lines 11, 12, and 13:

No reduction in employees or average paid hours: If you have not reduced the number of employees or the average paid hours of
your employees between January 1, 2020 and the end of the Covered Period, check here ☐.

FTE Reduction Safe Harbor 1: If you were unable to operate between February 15, 2020, and the end of the Covered Period at the
same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued
between March 1, 2020 and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease
Control and Prevention, or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation,
social distancing, or any other worker or customer safety requirement related to COVID-19, check here ☐.

FTE Reduction Safe Harbor 2: If you satisfy FTE Reduction Safe Harbor 2 (see PPP Schedule A Worksheet), check here ☐.

Line 11. Average FTE during the Borrower's chosen reference period: _____

Line 12. Total Average FTE (add lines 2 and 5): _____

Line 13. FTE Reduction Quotient (divide line 12 by line 11) or enter 1.0 if any of the above criteria are met: _____



PPP Schedule A Worksheet

Table 1: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of less than or equal to \$100,000 for all pay periods in 2019 or were not employed by the Borrower at any point in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE	Salary / Hourly Wage Reduction
FTE Reduction Exceptions:				
Totals:		Box 1	Box 2	Box 3

Table 2: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of more than \$100,000 for any pay period in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE
Totals:		Box 4	Box 5

Attach additional tables if additional rows are needed.

FTE Reduction Safe Harbor 2:

- Step 1. Enter the borrower's total average FTE between February 15, 2020 and April 26, 2020. Follow the same method that was used to calculate Average FTE in the PPP Schedule A Worksheet Tables. Sum across all employees and enter: _____.
- Step 2. Enter the borrower's total FTE in the Borrower's pay period inclusive of February 15, 2020. Follow the same method that was used in step 1: _____.
- Step 3. If the entry for step 2 is greater than step 1, proceed to step 4. Otherwise, FTE Reduction Safe Harbor 2 is not applicable and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.
- Step 4. Enter the borrower's total FTE as of the earlier of December 31, 2020, and the date this application is submitted: _____.
- Step 5. If the entry for step 4 is greater than or equal to step 2, enter 1.0 on line 13 of PPP Schedule A; the FTE Reduction Safe Harbor 2 has been satisfied. Otherwise, FTE Reduction Safe Harbor 2 does not apply and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.



PPP Borrower Demographic Information Form (Optional)

Instructions

1. **Purpose.** Veteran/gender/race/ethnicity data is collected for program reporting purposes only.
2. **Description.** This form requests information about each of the Borrower's Principals. Add additional sheets if necessary.
3. **Definition of Principal.** The term "Principal" means:
 - For a self-employed individual, independent contractor, or a sole proprietor, the self-employed individual, independent contractor, or sole proprietor.
 - For a partnership, all general partners and all limited partners owning 20% or more of the equity of the Borrower, or any partner that is involved in the management of the Borrower's business.
 - For a corporation, all owners of 20% or more of the Borrower, and each officer and director.
 - For a limited liability company, all members owning 20% or more of the Borrower, and each officer and director.
 - Any individual hired by the Borrower to manage the day-to-day operations of the Borrower ("key employee").
 - Any trustor (if the Borrower is owned by a trust).
 - For a nonprofit organization, the officers and directors of the Borrower.
4. **Principal Name.** Insert the full name of the Principal.
5. **Position.** Identify the Principal's position; for example, self-employed individual; independent contractor; sole proprietor; general partner; owner; officer; director; member; or key employee.

Principal Name		Position
Veteran	1=Non-Veteran; 2=Veteran; 3=Service-Disabled Veteran; 4=Spouse of Veteran; X=Not Disclosed	
Gender	M=Male; F=Female; X=Not Disclosed	
Race (more than 1 may be selected)	1=American Indian or Alaska Native; 2=Asian; 3=Black or African-American; 4=Native Hawaiian or Pacific Islander; 5=White; X=Not Disclosed	
Ethnicity	H=Hispanic or Latino; N=Not Hispanic or Latino; X=Not Disclosed	

Disclosure is voluntary and will have no bearing on the loan forgiveness decision

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 180 minutes. Comments about this time or the information requested should be sent to Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503. **PLEASE DO NOT SEND FORMS TO THESE ADDRESSES.**