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February 16, 2021

Submitted via www.regulations.gov

Hon. Tami L. Perriello
Acting Administrator
Small Business Administration
Docket Number SBA-2021-0001
409 3rd Street, SW
Washington, D.C. 20416

RE: SBA Notice entitled, “Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans,” SBA Docket SBA-2021-0002, 86 Fed. Reg. 3712

Dear Administrator Perriello:

On behalf of the National Association of Professional Insurance Agents (PIA)¹, I hereby submit the following comments in response to the January 14, 2021 Interim Final Rule (IFR)² published by the U.S. Small Business Administration (SBA). This IFR is intended to implement section 311 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (herein referred to as the “Economic Aid Act”) ([Pub. L. 116-260](#)).

The Economic Aid Act extends the SBA’s authority to issue PPP loans until March 31, 2021, allocates more than \$800 billion in additional federal funds to provide PPP loans, and revises some PPP requirements. Section 311 of the Economic Aid Act authorizes the SBA to issue additional (“Second-Draw”) loans using the Paycheck Protection Program (PPP), which was originally established by the March 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act ([Pub. L. 116-136](#)) in March 2020.

Overview

The PPP is a federal loan program that was originally created by the CARES Act. Beginning in early April 2020, the SBA began to issue interim final rules implementing and clarifying various aspects of the PPP. Since that time, the 116th Congress also passed several laws governing the PPP, the SBA has issued twenty-three interim final rules providing additional guidance on the PPP borrowing and forgiveness processes.

¹ By way of background, PIA is a national trade association founded in 1931. It represents member insurance agents in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals who can be found across America.

² <https://www.govinfo.gov/content/pkg/FR-2021-01-14/pdf/2021-00452.pdf>.

According to the IFR, “second-draw” loans are available to borrowers that previously received a PPP loan and have used or will use the full amount of their initial loan for permitted purposes on or before the anticipated date of disbursement of a second-draw PPP loan. Like the original PPP program, the SBA guarantees 100 percent of second-draw PPP loans, and second-draw loans may be forgiven up to the full principal loan amount, depending on how the loan proceeds are spent.

There are key differences between first- and second-draw PPP loans, and those differences are set forth in the IFR. Generally, the Economic Aid Act narrowed the eligibility requirements for second-draw PPP loans; specifically, second-draw borrowers must have 300 or fewer employees and must have experienced at least a 25 percent reduction in revenue in 2020 compared to 2019. Also, a second-draw loan may only be made to a borrower that received a first-draw loan and has used or will use the full amount of the first-draw loan on or before the date on which they expect to receive the second-draw disbursement. A second-draw borrower must have spent the full amount of its first-draw loan on eligible expenses pursuant to the PPP rules to be eligible for a second-draw loan; borrowers who have not adhered to PPP loan program requirements for first-draw loans will be denied access to second-draw loans.

PIA Supports Renewed Availability of PPP Loan Proceeds for Small Businesses

From the PPP’s inception nearly a year ago, until SBA stopped accepting PPP loan applications in August 2020, it was clear that the PPP was fundamentally inadequate to the monumental task of supporting small businesses through the economic strife caused by the pandemic. Modifications to and increased funding for the PPP stirred optimism among small businesses that it would sufficiently support them until the economic crisis passed. As the months have dragged on, and the economy has not recovered, it has become clear that small businesses need more help.

For that reason, PIA is pleased that Congress passed the Economic Aid Act, which provides more funding for PPP loans and authorizes lenders to issue second-draw loans.

PIA Urges SBA to Expand Availability of and Simplify Eligibility for Second-Draw Loans

Second-draw loans are only available to borrowers with 300 employees or fewer, and second-draw borrowers must have experienced a revenue reduction of at least 25 percent in 2020 compared to 2019. These conditions mean that the pool of eligible borrowers seeking second-draw loans is substantially smaller than those eligible for first-draw loans.

Moreover, the 25 percent reduction in revenue year over year can get complicated, and its complexity could drive potential second-draw borrowers away. Borrowers must compare gross receipts of one quarter in 2020 to that same quarter in 2019 to determine whether revenues decreased by at least 25 percent. If an applicant was not in business for the first half of 2019 but was in business during the second half, it can compare any quarter in 2020 with the third or fourth quarter of 2019 to determine whether there was a 25 percent decrease in gross receipts. If it was only in business in the fourth quarter of 2019, it may compare any quarter of 2020 with the fourth quarter of 2019 to identify a 25 percent decrease in gross receipts. Businesses must have

been in business by Feb. 15, 2020 to apply for a second draw. If an applicant was not in business in 2019 but was in business before Feb. 15, 2020, it will need to compare its gross receipts from the second, third, or fourth quarter of 2020 with the those of the first quarter of 2020.

Second-draw loans are also only available to borrowers who used up their first-draw loans before the expected disbursement of any second-draw loan. First, this implies that every borrower will have a date certain on which they will have spent the last of their first-draw loan proceeds. Second, it suggests that borrowers who still have even a penny of their first-draw loan will have no need for a second draw. Unfortunately, in our current economic climate, small businesses cannot conclude that they will not need a second draw. This provision creates a perverse incentive in which businesses that obtained a first-draw loan may be motivated to rush to spend the remainder of their first-draw loan proceeds to ensure their eligibility for a second.

PIA Urges SBA to Lift Cap on Second-Draw PPP Loans

Second-draw PPP loans are capped at \$2 million, and eligible entities can get only one second-draw loan. PIA urges the SBA to lift the \$2 million second-draw loan cap. It is not hard to imagine a small business, even one that took a PPP loan in 2020, in need of more than \$2 million. Indeed, the text of the IFR even indicates that a borrower's loan eligibility is capped at \$2 million or, generally, two and a half months of the borrower's average monthly payroll costs, whichever is less. This construction implicitly acknowledges that there will be potential second-draw borrowers for whom \$2 million is the smaller sum.

This cap represents an arbitrary limit on the ability of second-draw borrowers to seek and obtain the financing they need to remain a going concern during the worst economic crisis in modern American history.

Conclusion

PIA recognizes and appreciates the SBA's actions to revive the PPP lending process in accordance with the Economic Aid Act and hopes to see the availability of second-draw PPP loans expanded and the arbitrary \$2 million cap eliminated.

PIA looks forward to continuing to work with policymakers, the Treasury Department, and the SBA going forward to continue to improve the PPP borrowing process so that it provides the type and level of support needed for the nation's small businesses to survive in this challenging environment.

As always, PIA is grateful for the opportunity to provide the independent agent perspective. Please contact me at laurenpa@pianet.org or (202) 202-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, reading "Lauren G. Pachman". The signature is written in a dark ink and is positioned above the typed name.

Lauren G. Pachman
Counsel and Director of Regulatory Affairs
National Association of Professional Insurance Agents