

(A) recommendations, if any, regarding—

(i) staffing levels during a major disaster;

(ii) how to improve the process for processing, approving, and disbursing loans under the disaster loan program of the Administration, to ensure that the maximum assistance is provided to victims in a timely manner;

(iii) the viability of using alternative methods for assessing the ability of an applicant to repay a loan, including the credit score of the applicant on the day before the date on which the disaster for which the applicant is seeking assistance was declared;

(iv) methods, if any, for the Administration to expedite loss verification and loan processing of disaster loans during a major disaster for businesses affected by, and located in the area for which the President declared, the major disaster that are a major source of employment in the area or are vital to recovery efforts in the region (including providing debris removal services, manufactured housing, or building materials);

(v) legislative changes, if any, needed to implement findings from the Accelerated Disaster Response Initiative of the Administration; and

(vi) a description of how the Administration plans to integrate and coordinate the response to a major disaster with the technical assistance programs of the Administration; and

(B) the plans of the Administrator for implementing any recommendation made under subparagraph (A).

(Pub. L. 110-234, title XII, §12091, May 22, 2008, 122 Stat. 1423; Pub. L. 110-246, §4(a), title XII, §12091, June 18, 2008, 122 Stat. 1664, 2185.)

REFERENCES IN TEXT

Section 636(b) of this title, as amended by this Act, referred to in subsec. (c)(1), is section 636(b) of this title, as amended by Pub. L. 110-246.

The date of enactment of this Act, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

Section is comprised of section 12091 of Pub. L. 110-246. Subsec. (g) of section 12091 of Pub. L. 110-246 enacted section 657o of this title.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and also as part of the Small Business Disaster Response and Loan Improvements Act of 2008, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

§ 636l. Semiannual report

Not later than 180 days after December 20, 2019, and semiannually thereafter, the President

shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Appropriations of the Senate and the Committee on Small Business and the Committee on Appropriations of the House of Representatives a report on the number of loans made under the Military Reservist Economic Injury Disaster Loan program and the dollar volume of those loans. The report shall contain the subsidy rate of the disaster loan program as authorized under section 636(b) of this title with the loans made under the Military Reservist Economic Injury Disaster Loan program and without those loans included.

(Pub. L. 116-92, div. A, title VIII, §877(c), Dec. 20, 2019, 133 Stat. 1529.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2020, and not as part of the Small Business Act which comprises this chapter.

§ 636m. Loan forgiveness

(a) Definitions

In this section—

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

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

(A) is a liability of the borrower;

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

(C) was incurred before February 15, 2020;

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

(4) the term “covered period” means the period—

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

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

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

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

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

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

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

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

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

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

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

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

(9) the term “covered worker protection expenditure”—

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

(B) may include—

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

(I) a drive-through window facility;

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

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

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

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

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

(ii) the purchase of—

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

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

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

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

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

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

(A) payroll costs;

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

(C) payments on any covered rent obligation;

(D) covered utility payments;

(E) covered operations expenditures;

(F) covered property damage costs;

(G) covered supplier costs; and

(H) covered worker protection expenditures; and

(12) the terms “payroll costs” and “seasonal employer” have the meanings given those terms in section 636(a)(36) of this title. Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under section 2301 of the CARES Act or 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. Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020.¹

(b) Forgiveness

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

(1) Payroll costs.

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

(3) Any payment on any covered rent obligation.

(4) Any covered utility payment.

(5) Any covered operations expenditure.

(6) Any covered property damage cost.

(7) Any covered supplier cost.

(8) Any covered worker protection expenditure.

(c) Treatment of amounts forgiven

(1) In general

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

(2) Purchase of guarantees

For purposes of the purchase of the guarantee for a covered loan by the Administrator, amounts which are forgiven under this section shall be treated in accordance with the proce-

¹ So in original.

dures that are otherwise applicable to a loan guaranteed under section 636(a) of this title.

(3) Remittance

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

(4) Advance purchase of covered loan

(A) Report

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

(B) Purchase

The Administrator shall purchase the expected forgiveness amount described in subparagraph (A) as if the amount were the principal amount of a loan guaranteed under section 636(a) of this title.

(C) Timing

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

(d) Limits on amount of forgiveness

(1) Amount may not exceed principal

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

(2) Reduction based on reduction in number of employees

(A) In general

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

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

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

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

(bb) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or

(II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number

of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

(B) Calculation of average number of employees

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

(3) Reduction relating to salary and wages

(A) In general

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

(B) Employees described

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

(4) Tipped workers

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

(5) Exemption for re-hires

(A) In general

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

(B) Circumstances

A circumstance described in this subparagraph is a circumstance—

(i) in which—

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

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

(ii) in which—

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after March 27, 2020, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and

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

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

(6) Exemptions

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

(7) Exemption based on employee availability

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

(A) is able to document—

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

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

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

(8) Limitation on forgiveness

To receive loan forgiveness under this section, an eligible recipient shall use at least 60 percent of the covered loan amount for payroll costs, and may use up to 40 percent of such amount for any payment of interest on any

covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation), any payment on any covered rent obligation, any payment on any covered operations expenditure, any payment on any covered property damage cost, any payment on any covered supplier cost, any payment on any covered worker protection expenditure, or any covered utility payment.

(e) Application

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

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

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

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

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

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

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

(B) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, make payments on covered operations expenditures, make payments on covered property damage costs, make payments on covered supplier costs, make payments on covered worker protection expenditures, or make covered utility payments; and

(4) any other documentation the Administrator determines necessary.

(f) Prohibition on forgiveness without documentation

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

(g) Decision

Not later than 60 days after the date on which a lender receives an application for loan forgiveness under this section from an eligible recipient, the lender shall issue a decision on the an¹ application.

(h) Hold harmless**(1) Definition**

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

(2) Reliance

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

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

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

(3) No enforcement action

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

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

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

(i) Tax treatment

For purposes of title 26—

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

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

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

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

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

(j) Rule of construction

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

(k) Regulations

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

(l) Simplified application**(1) Covered loans up to \$150,000****(A) In general**

With respect to a covered loan made to an eligible recipient that is not more than \$150,000, the covered loan amount shall be forgiven under this section if the eligible recipient—

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

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

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

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

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

(cc) the total loan value;

(ii) attests that the eligible recipient has—

(I) accurately provided the required certification; and

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

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

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

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

(B) Limitation on requiring additional materials

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

(C) Records for other requirements

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

(D) Demographic information

The certification established by the Administrator under subparagraph (A) shall in-

clude a means by which an eligible recipient may, at the discretion of the eligible recipient, submit demographic information of the owner of the eligible recipient, including the sex, race, ethnicity, and veteran status of the owner.

(E) Audit authority

The Administrator may—

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

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

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

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

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

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

(A) In general

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

(B) Demographic information

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

(3) Forgiveness audit plan

(A) In general

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

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

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

(B) Reports

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

(i) the number of active reviews and audits;

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

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

(Pub. L. 85-536, §2[7A], formerly Pub. L. 116-136, div. A, title I, §1106, Mar. 27, 2020, 134 Stat. 297; Pub. L. 116-142, §3(b), June 5, 2020, 134 Stat. 641; renumbered Pub. L. 85-536, §2[7A], and amended Pub. L. 116-260, div. N, title II, §276(a)(1), title III, §§304(b)(1)(A), (B), (2), 305(a), 306, 307(a), 311(b)(1), 315(b), div. EE, title II, §206(c)(1), title III, §303(g), Dec. 27, 2020, 134 Stat. 1979, 1993, 1994, 1996-1998, 2006, 2011, 3060, 3079.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (a)(9)(A), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

Section 1102 of this Act, referred to in subsec. (a)(12), means section 1102 of div. A of Pub. L. 116-136.

Section 2301 of the CARES Act, referred to in subsec. (a)(12), is section 2301 of Pub. L. 116-136, which is set out as a note under section 3111 of Title 26, Internal Revenue Code.

Section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020, referred to in subsec. (a)(12), is section 303 of div. EE of Pub. L. 116-260, Dec. 27, 2020, 134 Stat. 3075. Subsec. (d)(3)(C) of section 303 of the Act amended provisions set out as notes under section 3111 of Title 26, Internal Revenue Code. Subsecs. (a) to (c) and the rest of subsec. (d) of section 303 of the Act are not classified to the Code.

CODIFICATION

Section was formerly classified to section 9005 of this title prior to renumbering by section 304(b)(1)(A) of title III of div. N of Pub. L. 116-260.

AMENDMENTS

2020—Subsec. (a)(1). Pub. L. 116-260, div. N, §304(b)(1)(B)(i), substituted “section 636(a)(36) of this title” for “paragraph (36) of section 636(a) of this title, as added by section 1102”.

Subsec. (a)(3). Pub. L. 116-260, div. N, §304(b)(2)(A)(v), added par. (3). Former par. (3) redesignated (4).

Pub. L. 116-142, §3(b)(1), added par. (3) and struck out former par. (3) which read as follows: “the term ‘covered period’ means the 8-week period beginning on the date of the origination of a covered loan;”.

Subsec. (a)(4). Pub. L. 116-260, div. N, §306(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “the term ‘covered period’ means, subject to subsection (l), the period beginning on the date of the origination of a covered loan and ending the earlier of—

“(A) the date that is 24 weeks after such date of origination; or

“(B) December 31, 2020;”

Pub. L. 116-260, div. N, §304(b)(2)(A)(iii), (iv), redesignated par. (3) as (4). Former par. (4) redesignated (6).

Subsec. (a)(5) to (11). Pub. L. 116-260, div. N, §304(b)(2)(A)(i)-(iv), (vi)-(viii), added pars. (5), (7), and (9) and redesignated former pars. (4), (5), (6), and (7) as (6), (8), (10), and (11), respectively. Former par. (8) redesignated (12).

Subsec. (a)(11)(E) to (H). Pub. L. 116-260, div. N, §304(b)(2)(A)(ix), added subpars. (E) to (H).

Subsec. (a)(12). Pub. L. 116-260, div. EE, §303(g), inserted at end “Such payroll costs shall not include qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020.”

Pub. L. 116-260, div. EE, §206(c)(1), inserted at end “Such payroll costs shall not include qualified wages

taken into account in determining the credit allowed under section 2301 of the CARES Act or 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.”

Pub. L. 116-260, div. N, §315(b), amended par. (12) generally. Prior to amendment, par. (12) read as follows: “the term ‘payroll costs’ has the meaning given that term in paragraph (36) of section 636(a) of this title, as added by section 1102 of this Act.”

Pub. L. 116-260, div. N, §304(b)(2)(A)(i), redesignated par. (8) as (12).

Subsec. (b)(5) to (8). Pub. L. 116-260, div. N, §304(b)(2)(B), added pars. (5) to (8).

Subsec. (c). Pub. L. 116-260, div. N, §304(b)(1)(B)(ii), made technical amendment to references in original act which appear in text wherever appearing as references to section 636(a) of this title.

Subsec. (d)(5)(B)(i)(II), (ii)(II). Pub. L. 116-260, div. N, §311(b)(1)(A), inserted “(or, with respect to a covered loan made on or after December 27, 2020, not later than the last day of the covered period with respect to such covered loan)” after “December 31, 2020”.

Pub. L. 116-142, §3(b)(2)(A), substituted “December 31, 2020” for “June 30, 2020”.

Subsec. (d)(7). Pub. L. 116-260, div. N, §311(b)(1)(B), in introductory provisions and subpar. (B) inserted “(or, with respect to a covered loan made on or after December 27, 2020, ending on the last day of the covered period with respect to such covered loan)” after “December 31, 2020” and in subpar. (A)(ii) inserted “(or, with respect to a covered loan made on or after December 27, 2020, on or before the last day of the covered period with respect to such covered loan)” after “December 31, 2020”.

Pub. L. 116-142, §3(b)(2)(B), added par. (7).

Subsec. (d)(8). Pub. L. 116-260, div. N, §304(b)(2)(C), inserted “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.”

Pub. L. 116-142, §3(b)(2)(B), added par. (8).

Subsec. (e). Pub. L. 116-260, div. N, §307(a)(1), substituted “Except as provided in subsection (1), an eligible” for “An eligible” in introductory provisions.

Subsec. (e)(2). Pub. L. 116-260, div. N, §304(b)(2)(D)(i), inserted “purchase orders, orders, invoices,” after “transcripts of accounts,” and substituted “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,” for “covered lease obligations.”

Subsec. (e)(3)(B). Pub. L. 116-260, div. N, §304(b)(2)(D)(ii), inserted “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.”

Subsec. (f). Pub. L. 116-260, div. N, §307(a)(2), inserted “or the certification required under subsection (l), as applicable” after “subsection (e)”.

Subsec. (h). Pub. L. 116-260, div. N, §305(a), amended subsec. (h) generally. Prior to amendment, text read as follows: “If a lender has received the documentation required under this section from an eligible recipient attesting that the eligible recipient has accurately verified the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments during covered period—

“(1) an enforcement action may not be taken against the lender under section 657t(e) of this title relating to loan forgiveness for the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments, as the case may be; and

“(2) the lender shall not be subject to any penalties by the Administrator relating to loan forgiveness for the payments for payroll costs, payments on covered

mortgage obligations, payments on covered lease obligations, or covered utility payments, as the case may be.”

Subsec. (i). Pub. L. 116-260, div. N, §276(a)(1), amended subsec. (i) generally. Prior to amendment, text read as follows: “For purposes of title 26, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income.”

Subsec. (l). Pub. L. 116-260, div. N, §307(a)(3), added subsec. (l).

Pub. L. 116-260, div. N, §306(1), struck out subsec. (l). Text read as follows: “An eligible recipient that received a covered loan before June 5, 2020, may elect for the covered period applicable to such covered loan to end on the date that is 8 weeks after the date of the origination of such covered loan.”

Pub. L. 116-142, §3(b)(3), added subsec. (l).

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. N, title II, §276(a)(2), Dec. 27, 2020, 134 Stat. 1979, provided that: “The amendment made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of the CARES Act [Pub. L. 116-136].”

Amendment by section 304(b)(1)(A), (B), (2) of div. N of Pub. L. 116-260 effective as if included in Pub. L. 116-136 and applicable to any loan made pursuant to section 636(a)(36) of this title before, on, or after Dec. 27, 2020, including forgiveness of such a loan, with provisions relating to exclusion of loans already forgiven, see section 304(c) of Pub. L. 116-260, set out as a note under section 636 of this title.

Pub. L. 116-260, div. N, title III, §305(b), Dec. 27, 2020, 134 Stat. 1997, provided that: “The amendment made by subsection (a) [amending 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 [Dec. 27, 2020], including forgiveness of such a loan.”

Pub. L. 116-260, div. N, title III, §307(b), Dec. 27, 2020, 134 Stat. 2000, provided that: “The amendments made by subsection (a) [amending 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 [Dec. 27, 2020], including forgiveness of such a loan.”

Amendment by section 315(b) of div. N of Pub. L. 116-260 effective as if included in Pub. L. 116-136 and applicable to any loan made pursuant to section 636(a)(36) of this title before, on, or after Dec. 27, 2020, including forgiveness of such a loan, see section 315(c) of Pub. L. 116-260, set out as a note under section 636 of this title.

Except as otherwise provided, amendment by title III of div. N of Pub. L. 116-260 effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116-260, set out as a note under section 636 of this title.

MODIFICATION OF DATES

Pub. L. 116-260, div. N, title III, §311(b)(2), Dec. 27, 2020, 134 Stat. 2007, provided that: “The Administrator [of the Small Business Administration] and the Secretary of the Treasury may jointly, by regulation, modify any date in section 7A(d) of the Small Business Act [15 U.S.C. 636m(d)], as redesignated and transferred by section 304 of this Act [probably means section 304 of title III of div. N of Pub. L. 116-260], other than a deadline established under an amendment made by paragraph (1) [amending this section], in a manner consistent with the purposes of the Paycheck Protection Program to help businesses retain workers and meet financial obligations.”

§ 637. Additional powers

(a) Procurement contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility; determinations; publication; recruitment; construction subcontracts; annual estimates; Indian tribes

(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

(B) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 636(j)(15) of this title, if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation; and

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(II) the anticipated award price of the contract (including options) will exceed \$7,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and \$3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.

(2) Notwithstanding subsections (a), (b), and (e) of section 3131 of title 40, no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the