

117TH CONGRESS
1ST SESSION

S. 1249

To amend the Small Business Act to modify the maximum paycheck protection program loan amount for farmers and ranchers, sole proprietors, independent contractors, and self-employed individuals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2021

Mr. CARDIN (for himself, Mr. LANKFORD, Ms. BALDWIN, Ms. COLLINS, Mr. KING, Mr. PORTMAN, and Mr. MARSHALL) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To amend the Small Business Act to modify the maximum paycheck protection program loan amount for farmers and ranchers, sole proprietors, independent contractors, and self-employed individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “PPP Flexibility for
5 Farmers, Ranchers, and the Self-Employed Act”.

1 **SEC. 2. CALCULATION OF MAXIMUM PPP LOAN AMOUNT.**

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

4 (1) by striking clause (i) and inserting the fol-
5 lowing:

6 “(i) DEFINITION.—In this subpara-
7 graph, the term ‘covered recipient’ means
8 an eligible recipient that—

9 “(I)(aa) operates as a sole pro-
10 prietorship, as an independent con-
11 tractor, or as a partnership with gross
12 farming income from self-employment;
13 or

14 “(bb) is an eligible self-employed
15 individual;

16 “(II) reports farm income or ex-
17 penses on a Schedule F (or any equiv-
18 alent successor schedule); and

19 “(III) was in business as of Feb-
20 ruary 15, 2020.”; and

21 (2) by striking clause (iv) and inserting the fol-
22 lowing:

23 “(iv) PARTNERSHIPS WITH NO EM-
24 PLOYEES.—With respect to a partnership
25 without employees, the maximum covered
26 loan amount shall be equal to the sum of—

1 “(I) the product obtained by mul-
2 tiplying—

3 “(aa) the gross income, lim-
4 ited to the amount attributable to
5 general partners as determined
6 by the sum of their distributive
7 shares of gross farming income
8 from self-employment, that is not
9 more than \$100,000 per partner,
10 and no more than \$500,000 in
11 total, divided by 12; and

12 “(bb) 2.5; and

13 “(II) the outstanding amount of
14 a loan under subsection (b)(2) that
15 was made during the period beginning
16 on January 31, 2020 and ending on
17 April 3, 2020 that the borrower in-
18 tends to refinance under the covered
19 loan, not including any amount of any
20 advance under the loan that is not re-
21 quired to be repaid.

22 “(v) RECALCULATION.—

23 “(I) IN GENERAL.—A lender that
24 made a covered loan before the date
25 of enactment of the PPP Flexibility

for Farmers, Ranchers, and the Self-Employed Act may, at the request of the covered recipient—

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

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

“(II) LOAN LIMITATION.—For purposes of receiving a recalculated loan amount related to a covered loan under subclause (I), paragraph (37)(F) shall not apply.

“(III) EFFECT OF FORGIVENESS.—Subject to rules issued by the Administrator, a covered recipient shall be eligible to submit a request for a recalculated loan amount related to a covered loan under subclause (I)

1 without regard to whether the covered
 2 recipient has sought or received for-
 3 giveness with respect to the applicable
 4 covered loan under section 7A.

5 “(IV) FORGIVENESS OF RECAL-
 6 CULATED LOAN AMOUNT.—For pur-
 7 poses of this subparagraph, as soon as
 8 is practicable upon expenditure of ad-
 9 ditional covered loan amounts pro-
 10 vided under subclause (I)—

11 “(aa) an eligible recipient
 12 shall attest to compliance with
 13 applicable requirements under
 14 this paragraph; and

15 “(bb) the additional covered
 16 loan amounts shall be forgiven
 17 under section 7A.

18 “(V) REIMBURSEMENT FOR
 19 LOAN PROCESSING.—The Adminis-
 20 trator shall reimburse a lender for
 21 processing recalculation requests
 22 under this clause in an amount deter-
 23 mined by the Administrator.”.

24 (b) EFFECTIVE DATE; APPLICABILITY.—The amend-
 25 ments made by subsection (a) shall be effective as if in-

1 cluded in the CARES Act (Public Law 116–136) and shall
 2 apply to any loan made pursuant to section 7(a)(36) of
 3 the Small Business Act (15 U.S.C. 636(a)(36)) before, on,
 4 or after the date of enactment of this Act.

5 **SEC. 3. REVISIONS TO LOAN AMOUNT CALCULATION AND**
 6 **ELIGIBILITY.**

7 (a) DEFINITIONS.—In this section—

8 (1) the term “Administrator” means the Ad-
 9 ministrator of the Small Business Administration;

10 (2) the term “covered loan” means a loan made
 11 under paragraph (36) or (37) of section 7(a) of the
 12 Small Business Act (15 U.S.C. 636(a));

13 (3) the term “eligible applicant” means a tax-
 14 payer that files Internal Revenue Service Form
 15 1040, Schedule C; and

16 (4) the term “interim final rule” means the in-
 17 terim final rule of the Small Business Administra-
 18 tion entitled “Business Loan Program Temporary
 19 Changes; Paycheck Protection Program – Revisions
 20 to Loan Amount Calculation and Eligibility”, Docket
 21 Number SBA–2021–0010.

22 (b) CALCULATION OF MAXIMUM LOAN AMOUNT FOR
 23 CERTAIN APPLICANTS.—

24 (1) IN GENERAL.—An eligible applicant apply-
 25 ing for a covered loan may calculate the maximum

1 amount of the covered loan using the gross income
2 of the eligible applicant, as reported on the applica-
3 ble Internal Revenue Service Form 1040, Schedule
4 C filed by the eligible applicant, that is not more
5 than \$100,000.

6 (2) RETROACTIVE EFFECT.—Notwithstanding
7 any provision of the interim final rule, paragraph (1)
8 shall apply with respect to any covered loan made to
9 an eligible applicant that is approved on or after the
10 date of enactment of the Economic Aid to Hard-Hit
11 Small Businesses, Nonprofits, and Venues Act (title
12 III of division N of Public Law 116–260).

13 (c) RECALCULATION.—

14 (1) IN GENERAL.—The Administrator shall cre-
15 ate a process to allow eligible applicants to request
16 a recalculation of the amount of a covered loan and
17 receive additional amounts equal to the difference
18 between the amount of the covered loan originally
19 received by the eligible applicant and the amount of
20 the covered loan based on the application of this sec-
21 tion.

22 (2) LOAN LIMITATION.—For purposes of receiv-
23 ing additional amounts under paragraph (1), section
24 7(a)(37)(F) of the Small Business Act (15 U.S.C.
25 636(a)(37)(F)) shall not apply.

1 (3) EFFECT OF FORGIVENESS.—Subject to
 2 rules issued by the Administrator, an eligible appli-
 3 cant shall be eligible to submit a request for a recal-
 4 culated loan amount under paragraph (1) without
 5 regard to whether the eligible applicant has sought
 6 or received forgiveness with respect to the applicable
 7 covered loan under section 7A of the Small Business
 8 Act (15 U.S.C. 636m).

9 (4) FORGIVENESS OF ADDITIONAL AMOUNTS.—
 10 For purposes of this subsection, as soon as is prac-
 11 ticable upon expenditure of additional covered loan
 12 amounts provided under paragraph (1)—

13 (A) an eligible applicant shall attest to
 14 compliance with applicable requirements under
 15 section 7(a)(37) of the Small Business Act (15
 16 U.S.C. 636(a)(37)); and

17 (B) the additional loan amounts shall be
 18 forgiven under section 7A of the Small Business
 19 Act (15 U.S.C. 636m).

20 (5) REIMBURSEMENT FOR LOAN PROC-
 21 ESSING.—The Administrator shall reimburse a lend-
 22 er for processing recalculation requests under this
 23 subsection in an amount determined by the Adminis-
 24 trator.

1 **SEC. 4. MAXIMUM AMOUNT OF SECOND DRAW LOAN.**

2 (a) IN GENERAL.—Section 7(a)(37) of the Small
3 Business Act (15 U.S.C. 636(a)(37)) is amended by strik-
4 ing subparagraph (C) and inserting the following:

5 “(C) MAXIMUM LOAN AMOUNT.—

6 “(i) IN GENERAL.—Except as other-
7 wise provided in this subparagraph, the
8 maximum amount of a covered loan made
9 to an eligible entity is the sum of—

10 “(I) the lesser of—

11 “(aa) the product obtained
12 by multiplying—

13 “(AA) at the election of
14 the eligible entity, the aver-
15 age total monthly payment
16 for payroll costs incurred or
17 paid by the eligible entity
18 during the 1-year period be-
19 fore the date on which the
20 loan is made or calendar
21 year 2019; by

22 “(BB) 2.5; or

23 “(bb) \$2,000,000; plus

24 “(II) with respect to a loan re-
25 ceived under paragraph (36) for which
26 the eligible entity received forgiveness

1 under section 1106 of the CARES Act
2 (as in effect before the date of enact-
3 ment of this paragraph), the amount
4 of an increase with respect to that
5 loan that the eligible entity would
6 have been eligible to receive under sec-
7 tion 312 of the Economic Aid to
8 Hard-Hit Small Businesses, Non-
9 profits, and Venues Act (title III of
10 division N of Public Law 116–260) if
11 the eligible entity had not received
12 such forgiveness.

13 “(ii) SEASONAL EMPLOYERS.—The
14 maximum amount of a covered loan made
15 to an eligible entity that is a seasonal em-
16 ployer is the sum of—

17 “(I) the lesser of—

18 “(aa) the product obtained
19 by multiplying—

20 “(AA) at the election of
21 the eligible entity, the aver-
22 age total monthly payments
23 for payroll costs incurred or
24 paid by the eligible entity
25 for any 12-week period be-

1 tween February 15, 2019
2 and February 15, 2020; by

3 “(BB) 2.5; or

4 “(bb) \$2,000,000; plus

5 “(II) with respect to a loan re-
6 ceived under paragraph (36) for which
7 the seasonal employer received for-
8 giveness under section 1106 of the
9 CARES Act (as in effect before the
10 date of enactment of this paragraph),
11 the amount of an increase with re-
12 spect to that loan that the seasonal
13 employer would have been eligible to
14 receive under section 312 of the Eco-
15 nomic Aid to Hard-Hit Small Busi-
16 nesses, Nonprofits, and Venues Act
17 (title III of division N of Public Law
18 116–260) if the seasonal employer
19 had not received such forgiveness.

20 “(iii) NEW ENTITIES.—The maximum
21 amount of a covered loan made to an eligi-
22 ble entity that did not exist during the 1-
23 year period preceding February 15, 2020
24 is the sum of—

25 “(I) the lesser of—

1 “(aa) the product obtained
2 by multiplying—

3 “(AA) the quotient ob-
4 tained by dividing the sum
5 of the total monthly pay-
6 ments by the eligible entity
7 for payroll costs paid or in-
8 curred by the eligible entity
9 as of the date on which the
10 eligible entity applies for the
11 covered loan by the number
12 of months in which those
13 payroll costs were paid or
14 incurred; by

15 “(BB) 2.5; or

16 “(bb) \$2,000,000; plus

17 “(II) with respect to a loan re-
18 ceived under paragraph (36) for which
19 the eligible entity received forgiveness
20 under section 1106 of the CARES Act
21 (as in effect before the date of enact-
22 ment of this paragraph), the amount
23 of an increase with respect to that
24 loan that the eligible entity would
25 have been eligible to receive under sec-

tion 312 of the Economic Aid to
Hard-Hit Small Businesses, Non-
profits, and Venues Act (title III of
division N of Public Law 116–260) if
the eligible entity had not received
such forgiveness.

“(iv) NAICS 72 ENTITIES.—The max-
imum 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 dis-
bursal is the sum of—

“(I) the lesser of—

“(aa) the product obtained
by multiplying—

“(AA) at the election of
the eligible entity, the aver-
age total monthly payment
for payroll costs incurred or
paid by the eligible entity
during the 1-year period be-
fore the date on which the
loan is made or calendar
year 2019; by

“(BB) 3.5; or

1 “(bb) \$2,000,000; plus
2 “(II) with respect to a loan re-
3 ceived under paragraph (36) for which
4 the eligible entity received forgiveness
5 under section 1106 of the CARES Act
6 (as in effect before the date of enact-
7 ment of this paragraph), the amount
8 of an increase with respect to that
9 loan that the eligible entity would
10 have been eligible to receive under sec-
11 tion 312 of the Economic Aid to
12 Hard-Hit Small Businesses, Non-
13 profits, and Venues Act (title III of
14 division N of Public Law 116–260) if
15 the eligible entity had not received
16 such forgiveness.”.

17 (b) EFFECTIVE DATE; APPLICABILITY.—The amend-
18 ments made by subsection (a) shall be effective as if in-
19 cluded in the Economic Aid to Hard-Hit Small Busi-
20 nesses, Nonprofits, and Venues Act (title III of division
21 N of Public Law 116–260) and shall apply to any loan
22 made pursuant to section 7(a)(37) of the Small Business
23 Act (15 U.S.C. 636(a)(37)) before, on, or after the date
24 of enactment of this Act.

1 **SEC. 5. ELIGIBILITY FOR PAYCHECK PROTECTION PRO-**
2 **GRAM SECOND DRAW LOANS.**

3 Section 7(a)(37)(A)(iv)(I)(bb) of the Small Business
4 Act (15 U.S.C. 636(a)(37)(A)(iv)(I)(bb)) is amended to
5 read as follows:

6 “(bb)(AA) except as pro-
7 vided in subitems (BB), (CC)
8 and (DD), had gross receipts
9 during any contiguous 90-day pe-
10 riod in 2020 that demonstrate
11 not less than a 25 percent reduc-
12 tion from the gross receipts of
13 the entity during the same period
14 in 2019;

15 “(BB) if the entity was not
16 in business during the entirety of
17 2019, but was in business for not
18 fewer than 90 contiguous days
19 during 2019, had gross receipts
20 during any contiguous 90-day pe-
21 riod in 2020 that demonstrate
22 not less than a 25 percent reduc-
23 tion from the gross receipts of
24 the entity during the same con-
25 tiguous 90-day period during
26 2019;

1 “(CC) if the entity was not
2 in business for the entirety of
3 2019 and was not in business for
4 90 contiguous days during 2019,
5 had gross receipts during any
6 contiguous 90-day period in 2020
7 that demonstrate not less than a
8 25 percent reduction from the
9 gross receipts of the entity dur-
10 ing a contiguous 90-day period
11 beginning on the date the busi-
12 ness began operations in 2019;
13 and

14 “(DD) if the entity was not
15 in business during 2019, but was
16 in business for not fewer than 90
17 contiguous days during 2020,
18 had gross receipts during any
19 contiguous 90-day period in 2020
20 that demonstrate not less than a
21 25 percent reduction from the
22 gross receipts of the entity dur-
23 ing an earlier contiguous 90-day
24 period in 2020;”.

1 **SEC. 6. ELIGIBILITY FOR RELIEF UNDER THE PAYCHECK**
 2 **PROTECTION PROGRAM AND THE RES-**
 3 **TAURANT REVITALIZATION FUND.**

4 Section 5003 of the American Rescue Plan Act (Pub-
 5 lic Law 117–2) is amended—

6 (1) in subsection (a)(7)—

7 (A) in subparagraph (A), by inserting
 8 “and subsection (c)(7)” after “(D)”; and

9 (B) by striking the flush text following
 10 subparagraph (D)(ii); and

11 (2) in subsection (c), by adding at the end the
 12 following:

13 “(7) REDUCTION IN PANDEMIC-RELATED REV-
 14 ENUE LOSS.—

15 “(A) DEFINITION.—In this paragraph, the
 16 term ‘covered loan’ means a loan made under
 17 paragraph (36) or (37) of section 7(a) of the
 18 Small Business Act (15 U.S.C. 636(a)).

19 “(B) REDUCTION.—For purposes of this
 20 section—

21 “(i) the pandemic-related revenue loss
 22 for an eligible entity shall be reduced by
 23 any amounts received from a covered loan
 24 in 2020 or 2021; and

25 “(ii) if an eligible entity receives a
 26 covered loan after submitting an applica-

1 tion for assistance under this section, the
 2 otherwise applicable amount of an award
 3 under this section shall be reduced by the
 4 total amount of the covered loan received
 5 by the eligible entity.

6 “(C) INELIGIBILITY FOR COVERED
 7 LOAN.—If an eligible entity has applied for a
 8 covered loan and is approved for an award
 9 under this section before the Administrator
 10 issues a loan number for the covered loan—

11 “(i) the eligible entity is ineligible for
 12 the covered loan; and

13 “(ii) acceptance by the eligible entity
 14 of any loan proceeds of the covered loan is
 15 an unauthorized use of the covered loan.”.

16 **SEC. 7. EXTENSION.**

17 (a) SALARIES AND EXPENSES.—The matter under
 18 the heading “SALARIES AND EXPENSES” under the head-
 19 ing “SMALL BUSINESS ADMINISTRATION” under the
 20 heading “INDEPENDENT AGENCIES” in title II of di-
 21 vision B of the Paycheck Protection Program and Health
 22 Care Enhancement Act (Public Law 116–139) is amended
 23 by striking “September 30, 2021” and inserting “Sep-
 24 tember 30, 2023”.

1 (b) MODIFICATION OF SET-ASIDES.—Section
2 323(d)(2)(B)(iii) of the Economic Aid to Hard-Hit Small
3 Businesses, Nonprofits, and Venues Act (title III of divi-
4 sion N of Public Law 116–260) is amended by striking
5 “March 31, 2021” and inserting “June 30, 2021”.

○