<u>Notable Items from the First IFR (for First Time Borrowers)</u>

1. **Absence of Revenue Reduction Calculation for First Draw Loans.** The most significant distinction between First Draw Loans and Second Draw Loans is the need to demonstrate a 25% reduction in gross receipts. Second time borrowers requesting Second Draw Loans must demonstrate the reduction, while first time borrowers do not. Generally speaking, the framework for first time borrowers will be substantially similar to the borrowing structure used by borrowers under the original PPP. When comparing the borrowing terms of the first PPP to this next round, many of the favorable terms have remained the same. For example, the loan will have a 1% interest rate (calculated on a non-compounding, non-adjustable basis), a 5-year maturity date, and no collateral or personal guarantee requirement.

2. **Maximum Loan Amount and Base Period Flexibility.** First time borrowers can receive a loan up to the lesser of <u>$10MM or 2.5X the average monthly salary</u>. (See PG 31 of First IFR). The base period for calculating average monthly salary can be: (1) 2019, (2) 2020, or (3) the 1-year period before the date on which the loan is made. This enhanced flexibility will help ensure that new PPP borrowers are treated even-handedly and do not see their permissible loan amounts reduced due to financial distress experienced in 2020.

3. **Calculating the Maximum Amount.** Page 31 of the First IFR provides a full discussion on how the maximum amount is calculated. The method is the same as the original PPP. Since the loan amount is largely based on payroll costs, applicants should have a thorough understanding of what constitutes "payroll costs." The SBA's discussion on payroll costs can be found in Sections (g) and (h) on Page 44 of the First IFR.

4. **Documentation.**

    a. <u>*PG 33 of First* IFR</u>: You must provide your Form 941 (or other tax forms containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever you used to calculate the loan amount), or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.

    b. <u>*PG 48 of First IFR*</u>: The applicant must [also] submit Paycheck Protection Program Borrower Application Form (SBA Form 2483), or lender's equivalent form, and payroll documentation, as described above. The lender must submit SBA Form 2484, Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty, electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

5. **Increased Flexibility for the "Covered Period."** Borrowers are no longer locked into an 8 or 24 week "covered period" for purposes of determining the applicable time period that will be used

for loan forgiveness calculations. Borrowers can now choose an end date that is anywhere between 8 and 24 weeks. (See Page 48 of First IFR). The start date will still be the date the lender disburses the loan proceeds.

6. **Use of PPP Loan Proceeds.** The requirement that at least 60% of the loan proceeds be used on payroll still exists. The remaining 40% can be spent on eligible non-payroll costs. The pool of eligible non-payroll costs has expanded. A detailed discussion of eligible costs can be found in Section 11 of the First IFR (starting on Page 48). Notable additions include (i) covered operational expenditures, (ii) covered property damage, (iii) essential supplier costs, and (iv) covered worker protection expenditures. The addition of "covered worker protection expenditures" is a welcomed change for businesses who experienced increased costs related to COVID safety compliance efforts.

7. **Necessity Certification.** First time borrowers will still have to certify that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant." (see Page 55 of First IFR). As with the first program, a safe harbor exists for borrowers receiving a loan less than $2 million. Such borrowers will be deemed to have made the required certification concerning the necessity of the loan request in good faith. (See Page 57 of First IFR).

8. **Simplified loan forgiveness process for loans $150,000 or less.** Borrowers with loans of $150,000 or less will be able to use a one-page forgiveness application that will not require the submission of documentation substantiating many of the certifications made during the initial application. Instead, such borrowers will be required to retain employment records for a 4-year period and all other records for a 3-year period. The SBA may review and audit PPP loans of $150,000 or less and access any records the borrower is required to retain. (See Page 59 of First IFR).

9. **Borrowers can reapply or request an increase in their first PPP loan amount.** There are three common scenarios where this may come up. First, if the borrower returned all of a PPP loan, the borrower may reapply for a PPP loan in an amount the borrower is eligible for under new PPP rules. Second, if the borrower returned part of a PPP loan, the borrower may reapply for an amount equal to the difference between the amount retained and the amount previously approved. Third, if the borrower did not accept the full amount of a loan for which it was approved, the borrower may request an increase in the amount of the PPP loan up to the amount previously approved. A full discussion of the reapplication and loan increase process can be found on Page 76 of the First IFR. The SBA is expected to issue more guidance in this area.

10. **Repayments of principal and interest.** If you submit to your lender a loan forgiveness application within 10 months after the end of your Loan Forgiveness Covered Period, you will not have to make any payments of principal or interest on your loan before the date on which SBA remits the loan forgiveness amount on your loan to your lender (or notifies your lender that no loan forgiveness is allowed). If you do not submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you must begin paying principal and interest after that period. (See Page 47 of First IFR).

Notable Items from the Second IFR (for Second Draw Loans)

As discussed above, previous PPP borrowers can receive another PPP loan (known as a "Second Draw Loan") subject to the rules set forth in the Second IFR. Main highlights include:

11. **Eligibility**. The following must be met to be eligible for a Second Draw Loan. A detailed eligibility discussion can be found on Page 20 of the Second IFR.

    - You received a PPP loan under the first program +

    - You used or will use the full amount of the initial PPP loan for authorized purposes on or before the expected date of disbursement of the Second Draw Loan +

    - You have 300 or fewer employees +

    - *You experienced a 25% revenue reduction in 2020 relative to 2019*. This is assessed by evaluating gross receipts in any quarter in 2020 and comparing it to the same quarter in 2019. If a quarterly analysis is not preferred, borrowers can choose to simply compare 2020 to 2019 on an annual gross receipts basis.

12. **Maximum Amount of Second Draw Loan**. A Second Draw Loan must be the lesser of $2million or 2.5X the average monthly payroll costs. The relevant time period for calculating a borrower's payroll costs for a Second Draw Loan is either: (a) the 12-month period prior to when the loan is made, (b) calendar year 2019, or (c) calendar year 2020. (See Page 13 of Second IFR).

13. **No new payroll documentation is required if you are using the same base period** to calculate the amount of your Second Draw Loan that was used for the First Draw Loan. The lender may request additional documentation if deemed necessary for a good-faith review of the calculation. (See Page 15 of Second IFR).

14. **Documentation requirements substantiating revenue reduction.** For loans with a principal amount greater than $150,000, the applicant must submit documentation adequate to establish that the applicant experienced a revenue reduction of 25% or greater in 2020 relative to 2019. For loans with a principal amount of $150,000 or less, such documentation is not required at the time the borrower submits its application for a loan, but must be submitted on or before the date the borrower applies for loan forgiveness. (See Page 16 of Second IFR).

15. **Defining "Gross Receipts" for Revenue Reduction Calculations.** A detailed definition of what is included in "gross receipts" can be found on Page 22 of the Second IFR. Generally, gross receipts will include all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. The Second IFR highlights a few items that should not be included in gross receipts. They include: (i) any forgiveness amount of a First Draw Loan that a borrower received in 2020; (ii) taxes collected for and remitted to a taxing authority if included in gross or total income (such as sales or other

taxes collected from customers and excluding taxes levied on the concern or its employees); (iii) proceeds from transactions between a concern and its domestic or foreign affiliates; and (iv) amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, investment income, and employee-based costs such as payroll taxes, may not be excluded from gross receipts.

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