



Compliance Information for Community Bankers by Community Bankers

Karen Neeley
IBAT General Counsel
kneeley@ibat.org

Kelly Goulart
IBAT Senior Compliance Manager
kgoulart@ibat.org

Christy Bussey
IBAT Dir. Of Growth and Development
cbussey@ibat.org

**Paycheck Protection Program Updates (as of January 19, 2021)
The Economic Aid to Hard Hit Small Businesses, Nonprofits, and Venues Act Summary**

Topic	Guidance	Comments/Helpful Links
<p>1st Time PPP Borrowers</p>	<p>Borrowers are eligible if together with any affiliates (if applicable) they are:</p> <ol style="list-style-type: none"> 1) a small business concern under the applicable revenue-based size standard established by SBA in 13 C.F.R. 121.201 for your industry or under the SBA alternative size standard; <ul style="list-style-type: none"> • an independent contractor, eligible self-employed individual, or sole proprietor; • a business concern, a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, and employ no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201; • a housing cooperative, an eligible section 501(c)(6) organization, or an eligible destination marketing organization, that employs no more than 300 employees; • a news organization that is majority owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS 511110 or 5151, that employs no more than 500 employees (or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for your industry) per location; or • another type of entity specifically provided for by PPP rules; and 2) were in operation on February 15, 2020, and 3) had employees for whom they paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC or were an eligible self-employed individual, independent contractor, or sole proprietorship with no employees. 	<p>IFR on Amendments to PPP Program</p> <p>1st Draw Application Form</p>

1st Time PPP Borrowers (cont.)	Differences from 2nd Draw Borrowers: <ol style="list-style-type: none"> 1) Borrowers do not have to meet the 25% reduction in gross receipts requirement 2) Maximum Loan Amount \$10MM 	
Affiliates	Affiliation Rules The same affiliation rules that apply to First Draw PPP Loans also apply to Second Draw PPP Loans AND The affiliation rules under 13 CFR 121.301(f) are waived with respect to eligibility for a Second Draw PPP Loan for: <ul style="list-style-type: none"> • Any business concern with not more than 300 employees that, as of the date on which the covered loan is disbursed, is assigned a NAICS code beginning with 72; and • 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 13 C.F.R. § 121.105, or any successor thereto) that employs not more than 300 employees, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a NAICS code beginning with 511110 or 5151; or (B) any nonprofit organization that is assigned a NAICS code beginning with 5151. 	Affiliation Rules Affiliation IFR
2nd Draw PPP Borrowers	Maximum loan amount of \$2MM Eligibility criteria for a 2 nd loan include: <ol style="list-style-type: none"> 1) Must have received a First Draw PPP loan in accordance with the eligibility criteria 2) Must have used, or will use, the full amount of its First Draw PPP Loan (including the amount of any increase on such First Draw PPP Loan) on authorized uses on or before the expected date on which the Second Draw PPP Loan will be disbursed 3) Must not employ more than 300 employees, unless it satisfies the alternative criteria for businesses with a North American Industry Classification System (“NAICS”) code beginning with 72 and eligible news organizations with more than one physical location; 4) Must have had a reduction of 25% or more in gross receipts in any quarter of 2020 when compared with the same quarter of 2019. (For businesses who do not have quarterly financials, an option of year over year (2019 vs 2020) is allowed). <p>Note: The amount of any forgiven First Draw PPP Loan shall not be included toward any borrower’s gross receipts.</p>	<p style="text-align: center;">1st PPP loan proceeds must be used or will be used for eligible purposes prior to disbursement of 2nd PPP loan.</p> IFR on 2nd Draw Loans 2nd Draw Application Form 2nd Draw Calculations and Documentation Q&A

<p>Changes in Ownership</p>	<p>A “change of ownership” will be considered to have occurred when</p> <ol style="list-style-type: none"> (1) at least 20 percent of the common stock or other ownership interest of a PPP borrower (including a publicly traded entity) is sold or otherwise transferred, whether in one or more transactions, including to an affiliate or an existing owner of the entity, (2) the PPP borrower sells or otherwise transfers at least 50 percent of its assets (measured by fair market value), whether in one or more transactions, or (3) a PPP borrower is merged with or into another entity. <p>Regardless of any change of ownership, the PPP borrower remains responsible for</p> <ol style="list-style-type: none"> (1) performance of all obligations under the PPP loan, (2) the certifications made in connection with the PPP loan application, including the certification of economic necessity, and (3) compliance with all other applicable PPP requirements. <p>Additionally, the PPP borrower remains responsible for obtaining, preparing, and retaining all required PPP forms and supporting documentation and providing those forms and supporting documentation to the PPP lender or lender servicing the PPP loan or to SBA upon request.</p>	<p><u>Changes in Ownership Guidance</u></p>
<p>Increases to PPP Loans</p>	<p>Certain eligible borrowers may reapply for a new First Draw PPP Loan or request an increase to a First Draw PPP Loan approved on or before August 8, 2020.</p> <p>Partnerships: If a partnership received a First Draw PPP Loan that only included amounts necessary for payroll costs of the partnership’s employees and other eligible operating expenses, but did not include any amount for partner compensation, and SBA has not remitted a forgiveness payment to the Lender on that loan</p> <p>Seasonal Employers: If a seasonal employer received a First Draw PPP Loan and SBA has not remitted a forgiveness payment to the Lender on that loan, the seasonal employer would be eligible for an increase if application of the methodology in Section 336 of the Economic Aid Act results in the calculation of a higher loan amount.</p> <p>Farmers and Ranchers: If an eligible farmer or rancher received a First Draw PPP Loan and SBA has not remitted a forgiveness payment to the Lender on that loan, and such farmer or rancher would be eligible for a higher maximum loan amount based on the new methodology in the Economic Aid Act.</p> <p>Other PPP borrowers eligible for an increase include:</p> <ol style="list-style-type: none"> 1) Eligible Borrowers that fully repaid a First Draw PPP Loan before December 27, 2020 2) Eligible Borrowers that returned part of a First Draw PPP Loan before December 27, 2020 3) Eligible Borrowers that did not accept the full amount of a First Draw PPP Loan for which they were approved 	<p><u>SBA Procedural Notice</u></p>

<p>Increases to PPP Loans (cont.)</p>	<p>First Draw PPP Loan increases can be made only by the Lender of Record Increase requests must be submitted electronically in E-tran on or before March 31, 2021 and are subject to availability of funds.</p> <p>Lenders must submit updated 1502 information within 20 calendar days after a PPP loan increase is approved. SBA’s Fiscal Transfer Agent (FTA) provides step-by-step instructions for 1502 reporting and for making changes to loan statuses and loan amounts.</p> <p>Lenders may approve increases on First Draw PPP Loans starting on January 25, 2021 Instructions for submitting a reapplication for a new First Draw PPP Loan can be found in the welcome email sent to all lenders from SBA as well as on the SBA Paycheck Protection Platform (previously known as the Loan Forgiveness Platform)</p>	
<p>Ineligible Borrowers</p>	<p>Businesses who were not in operation on February 15, 2020 are NOT eligible.</p> <p>Entities that receive a grant under the Shuttered Venue Operator Grant Program are NOT eligible.</p> <p>Ineligible entities include those entities listed in 13 CFR 120.110 except for those otherwise made eligible by statute or guidance.</p> <p>Additional ineligible borrowers:</p> <ol style="list-style-type: none"> 1) Those engage in any activity that is illegal under Federal, State, or local law 2) Household employer (those who employ household employees such as nannies or housekeepers) 3) Any entity where an owner of 20% or more of the equity is incarcerated or under indictment for certain felony criminal activity 4) Any owner or business who is currently delinquent on an SBA guaranteed debt or has defaulted within the last 7 years and caused a loss to the government 5) A business where the President, Vice President, head of an Executive Department or Member of Congress or the spouse of such person directly or indirectly holds a controlling interest 6) A business that is an issuer of securities which are listed on an exchange registered and a national securities exchange under of Section 6 of the Securities Exchange Act of 1934 7) A business that has permanently closed 8) A business in bankruptcy either at time of application or any time before the loan is disbursed 9) A hedge fund or private equity firm 10) Certain business concerns created in or operating in or director from the People’s Republic of China or the Special Administration Region of Hong Kong 11) Person required to submit a registration statement under Section 2 of the Foreign Agents Registration Act of 1938 	

<p>New Entities Eligible for PPP Loans</p>	<p>Housing Cooperatives defined in section 216(b) of the Internal Revenue Code of 1986 which employ no more than 300 employees</p> <p>FCC license holders and newspapers with more than one physical location if the business has not more than 500 employees per physical location or the applicable SBA size standard including 511 public colleges and universities that have a public broadcasting station if the organization certifies the loan will support locally focused emergency information.</p> <p>501(c)6 organizations if:</p> <ol style="list-style-type: none"> 1) The organization does not receive more than 15% of receipts from lobbying 2) Lobbying activities do not comprise more than 15% of activities 3) The cost of lobbying activities did not exceed \$1MM during the most recent tax year that ended prior to February 15, 2020 4) The organization has 300 or fewer employees <p>Professional sports leagues or organizations with the purpose of promoting or participating in a political campaign or other political activities are not eligible under this section.</p> <p>Destination Marketing Organizations if:</p> <ol style="list-style-type: none"> 1) The organization does not receive more than 15% of receipts from lobbying 2) Lobbying activities do not comprise more than 15% of activities 3) The organization has 300 or fewer employees 4) The organization is registered as a 501(c) organization, a quasi-government entity or a political subdivision of a state or local government. 	
<p>Prohibition on Use of Loan Proceeds</p>	<p>Proceeds of a PPP loan CAN NOT be used for lobbying activities as defined by the Lobbying Disclosure Act, lobbying expenditures related to stare of local campaigns, and expenditures to influence the enactment of legislation, appropriations, or regulations.</p>	

Eligible Expenses

At least 60 percent of the PPP loan proceeds must be used for payroll costs.

For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included on 1st draw PPP loans. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness.

New Eligible Expenses:

- **Covered Operations Expenditure** --defined as 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
- **Covered Property Damage Cost**—defined as 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
- **Covered Supplier Cost**—defined as an expenditure made by an entity to a supplier of goods for the supply of goods that are essential to the operations of the entity at the time at which the expenditure is made and is made pursuant to a contract, order or purchase order in effect at any time before the covered period with the respect to the applicable covered loan; or with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan
- **Covered Worker Protection Expenditure**—defined as 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 on 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.

May include—the purchase, maintenance, or renovation of assets that create or expand a drive-through window facility; an indoor, outdoor, or combined air or air pressure ventilation or filtration system; a physical barrier such as a sneeze guard; an indoor, outdoor, or combined business space; an onsite or offsite health screening capability; or other assets relating to the compliance with the requirements or guidance described above. Other kinds of personal protective equipment, as determined by the Administrator in consultation with the Secretary of Health and Human Services. Does not include residential real property or intangible property.

Eligible Group Insurance Costs	Description of eligible insurance costs included in payroll is updated by clarifying that group life, disability, vision, or dental insurance can be considered	
Definition of a Seasonal Employer	<p>Defines a seasonal employer as an eligible recipient if:</p> <ol style="list-style-type: none"> 1) Does not operate for more than 7 months in any calendar year; or 2) If during the preceding calendar year, had gross receipts for any 6 months of that year that were not more than 33.33% of the gross receipts for the other 6 months of that year. 	
Gross Receipts Definition	<p>Gross receipts 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. Generally, receipts are considered “total income” (or in the case of a sole proprietorship “gross income”) plus “cost of goods sold” and excludes net capital gains or losses as these terms are defined and reported on IRS tax return forms. Gross receipts do not include the following: 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; proceeds from transactions between a concern and its domestic or foreign affiliates; and 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. Gross receipts of a borrower must be aggregated with gross receipts of its affiliates. For a nonprofit organization, veterans’ organization, nonprofit news organization, 501(c)(6) organization, and destination marketing organization, gross receipts has the meaning in section 6033 of the Internal Revenue Code of 1986.</p>	<p>Applies to any reference to Gross Receipts</p> <p>2nd Draw Calculations and Documentation Q&A</p>
Average Payroll Calculations	<p>For purposes of calculating “Average Monthly Payroll,” most Applicants will use the average monthly payroll for 2019 or 2020, excluding costs over \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, for each employee.</p> <p>Seasonal Employers</p> <p>For seasonal businesses, the Applicant may elect to instead use average total monthly payroll for any twelve-week period selected by the Applicant between February 15, 2019 and February 15, 2020, excluding costs over \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, for each employee.</p> <p>New Businesses</p> <p>For new businesses without 12 months of payroll costs but that were in operation on February 15, 2020, average monthly payroll may be calculated based on the number of months in which payroll costs were incurred, excluding costs over \$100,000 on an annualized basis for each employee, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, for each employee.</p>	

<p>Average Payroll Calculations (cont.)</p>	<p>Farmers and Ranchers Farmers and ranchers that operate as a sole proprietorship or as an independent contractor, or who are eligible self-employed individuals and report farm income or expenses on a Schedule F (or any equivalent successor IRS form), payroll costs are computed using eligible payroll costs for employees, if any, plus the lesser of \$100,000 and the difference between gross income and any eligible payroll costs for employees, as reported on a Schedule F.</p> <p>Self Employed Applicants For Applicants that file IRS Form 1040, Schedule C, payroll costs are computed using line 31 net profit amount, limited to \$100,000, plus any eligible payroll costs for employees.</p> <p>Partnerships Payroll costs are computed using net earnings from self-employment of individual general partners, as reported on IRS Form 1065 K-1, reduced by section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties, multiplied by 0.9235, that is not more than \$100,000, plus any eligible payroll costs for employees.</p>	
<p>Maximum Loan Amount Calculations</p>	<p>Step 1: Aggregate payroll costs from 2019 or 2020 for employees whose principal place of residence is the United States.</p> <p>Step 2: Subtract any compensation paid to an employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred.</p> <p>Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12)</p> <p>Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5. <i>For a borrower assigned a NAICS code beginning with 72 multiply the average monthly payroll costs by 3.5 on 2nd Draw PPP Loans</i></p> <p>Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid). *</p>	<p>EIDL Refi does not apply to 2nd Draw Loans</p> <p><u>For a borrower assigned a NAICS code beginning with 72, multiply the average monthly payroll costs by 3.5 on 2nd Draw PPP Loans</u></p> <p><u>Guidance on Maximum Loan Amount and Documentation Requirements</u></p> <p><u>EIDL Refinance Guidance</u></p>

**Maximum Loan
Amount
Calculations
(cont.)**

Self Employed Borrowers

Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding the following:

- a. 2019 or 2020 Form 1040 Schedule C line 31 net profit amount (if you are using 2020 and have not yet filed a 2020 return, fill it out and compute the value), up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, if this amount is over \$100,000, reduce it to \$100,000, if this amount is less than zero, set this amount at zero.

If the borrower has employees use b. and c. (if not skip these sections)

- b. 2019 or 2020 gross wages and tips paid to employees whose principal place of residence is in the United States computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages & tips (line 5c- column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips; subtract any amounts paid to any individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred and any amounts paid to any employee whose principal place of residence is outside the United States; and
- c. 2019 or 2020 employer contributions to employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040 Schedule C line 14 attributable to those contributions); retirement contributions (Form 1040 Schedule C line 19), and state and local taxes assessed on employee compensation (primarily under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms).

Step 2: Calculate the average monthly amount (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly amount from Step 2 by 2.5. ***For a borrower assigned a NAICS code beginning with 72 multiply the average monthly payroll costs by 3.5 on 2nd Draw PPP Loans***

Step 4: Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid). *

Seasonal Employers

Use the employer's average total monthly payments for payroll for any 12-week period selected by the seasonal employer beginning February 15, 2019, and ending February 15, 2020

[2nd Draw Calculations and Documentation Q&A](#)

Farmers and Ranchers

Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding the following:

- a. The difference between your 2019 or 2020 Form 1040 Schedule F line 9 gross income amount (if you are using 2020 and you have not yet filed a 2020 39 return, fill it out and compute the value), and the sum of Schedule F lines 15, 22, 23, and 37, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, if this amount is over \$100,000, reduce it to \$100,000, if this amount is less than zero, set this amount at zero;

If the borrower has employees use b. and c (if not skip these sections)

- b. 2019 or 2020 gross wages and tips paid to your employees whose principal place of residence is in the United States computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages & tips (line 5c- column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips; subtract any amounts paid to any individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred and any amounts paid to any employee whose principal place of residence is outside the United States; and
- c. 2019 or 2020 employer contributions for employee group health, life, disability, vision and dental insurance (portion of IRS Form 1040 Schedule F line 15 attributable to those contributions), employer contributions for employee retirement contributions (Form 1040 Schedule F line 15), and state and local taxes assessed on employers for employee compensation under state laws commonly referred to as the State Unemployment Tax Act or SUTA from state quarterly wage reporting forms).

Step 2: Calculate the average monthly amount (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly amount from Step 2 by 2.5. ***For a borrower assigned a NAICS code beginning with 72 multiply the average monthly payroll costs by 3.5 on 2nd Draw PPP Loans***

Step 4: Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid). *

Any employee payroll costs should be subtracted from the farmer's or rancher's gross income to avoid double counting amounts that represent pay to the employees of the farmer or rancher.

**Maximum Loan
Amount
Calculations
(cont.)**

Partnerships

Step 1: Compute 2019 or 2020 payroll (using the same year for all items) by adding

- (1) net earnings from self-employment of individual general partners in 2019 or 2020, as reported on IRS Form 1065 K-1, reduced by section 179 expense deduction claimed, unreimbursed partnership expenses claimed, and depletion claimed on oil and gas properties, multiplied by 0.9235, 57 that is not more than \$100,000 per partner;
- (2) 2019 or 2020 gross wages and tips paid to your employees whose principal place of residence is in the United States, if any, which can be computed using 2019 or 2020 IRS Form 941 Taxable Medicare wages and tips (line 5c-column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages and tips, subtracting any amounts paid to any individual employee in excess of \$100,000 and any amounts paid to any employee whose principal place of residence is outside the U.S.;
- (3) 2019 or 2020 employer contributions for employee group health, life, disability, vision and dental insurance, if any (portion of IRS Form 1065 line 19 attributable to those contributions);
- (4) 2019 or 2020 employer contributions to employee retirement plans, if any (IRS Form 1065 line 18); and
- (5) 2019 or 2020 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms), if any.

Step 2: Calculate the average monthly payroll costs (divide the amount from Step1 by 12).

Step 3: Multiply the average monthly payroll costs from Step 2 by 2.5. ***For a borrower assigned a NAICS code beginning with 72 multiply the average monthly payroll costs by 3.5 on 2nd Draw PPP Loans***

Step 4: Add any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

***EIDL REFI DOES NOT APPLY TO 2ND DRAW PPP LOANS**

<p>Excess Loan Amount Corrections</p>	<p>When preparing or reviewing a loan forgiveness application, if a borrower or lender identifies an error that resulted in a borrower receiving a larger PPP loan than the borrower was eligible to receive, the lender must issue a decision to SBA denying forgiveness for the amount that exceeded the borrower’s correct maximum loan amount.</p> <p>If an excess loan amount error is discovered after the lender has already submitted a forgiveness decision to SBA, the lender should promptly request the withdrawal of the lender loan forgiveness decision by notifying SBA through the SBA Paycheck Protection Platform. The lender may then submit a new lender loan forgiveness decision for the correct amount through the SBA Paycheck Protection Platform. A borrower must repay any unforgiven portion of a PPP loan. If a lender discovers an excess loan amount error after SBA has issued a final loan forgiveness decision and remitted payment, lender must promptly notify the borrower and SBA through the SBA Paycheck Protection Platform.</p>	<p>Guidance on Loan Amount Corrections</p>
<p>Simplified Revenue Test for Loans up to \$150,000</p>	<p>For loans of \$150M or less, the borrower may submit a certification statement only that it meets the revenue loss requirement at the time of application and provide proof of revenue loss at the time they submit a forgiveness application.</p>	
<p>Forgiveness for Loans \$150,000 or Below</p>	<p>For loans \$150,000 or less made to an eligible recipient, forgiveness will be granted with the following information:</p> <ol style="list-style-type: none"> 1. A signed and submitted 1-page application (to be established by SBA within 24 days of the enactment of this Act) providing: <ol style="list-style-type: none"> A. A description of the number of employees retained because of the PPP loan B. Estimated amount of PPP loan spent on payroll costs C. Total loan amount D. Attestations that: <ol style="list-style-type: none"> a. The information is accurate b. The borrower complied with the requirements of the statute c. The borrower will retain records that prove compliance as follows: <ol style="list-style-type: none"> i. Employment records- 4 years after application submission ii. Other records-3 years after application submission <p>Does not allow for additional information requests at the time of application for purposes of forgiveness but does allow requests to satisfy other statutory or regulatory requirements.</p> <p>The SBA will still have the right to audit and review these loans.</p>	<p>Form 3508S Forgiveness Application</p>

<p>Forgiveness Resubmission</p>	<p>A borrower that is eligible to use SBA Form 3508S, but applied for loan forgiveness using PPP Loan Forgiveness Application Form 3508EZ or 3508, may resubmit its loan forgiveness application to its lender using SBA Form 3508S at any time until SBA notifies the lender of a final SBA loan review decision or remits to the lender the PPP loan forgiveness payment. If a lender receives a timely borrower resubmission of a loan forgiveness application using SBA Form 3508S, the lender should promptly request the withdrawal of any lender loan forgiveness decision by notifying SBA through the SBA Paycheck Protection Platform. After SBA notifies the lender of a final SBA loan review decision or remits to the lender the PPP loan forgiveness payment are not permitted.</p>	<p><u>Forgiveness Resubmission Guidance</u></p>
<p>General Forgiveness Provisions</p>	<p>First Draw PPP Loan forgiveness terms</p> <ul style="list-style-type: none"> • First Draw PPP Loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement: • Employee and compensation levels are maintained • The loan proceeds are spent on payroll costs and other eligible expenses; and • At least 60 percent of the proceeds are spent on payroll costs <p>Second Draw PPP Loan forgiveness terms</p> <p>Second Draw PPP Loans made to eligible borrowers qualify for full loan forgiveness if during the 8 to 24 week covered period following loan disbursement:</p> <ul style="list-style-type: none"> • Employee and compensation levels are maintained in the same manner as required for the First Draw PPP loan • The loan proceeds are spent on payroll costs and other eligible expenses; and • At least 60 percent of the proceeds are spent on payroll costs <p>A borrower can apply for forgiveness once all loan proceeds for which the borrower is requesting forgiveness have been used. Borrowers can apply for forgiveness any time up to the maturity date of the loan. If borrowers do not apply for forgiveness within 10 months after the last day of the covered period, then PPP loan payments are no longer deferred, and borrowers will begin making loan payments to their PPP lender using either the SBA Form 3508, SBA Form 3508EZ, SBA Form 3508S</p>	<p><u>Forgiveness FAQ</u></p> <p><u>Form 3508 Forgiveness Application</u></p> <p><u>Form 3508 EZ Forgiveness Application</u></p>

Documentation Requirements	<p>Application documentation must be sufficient to establish eligibility and to demonstrate the qualifying payroll amount, which may include payroll records, payroll tax filings, Form 1099-MISC, Schedule C or F, income and expenses from a sole proprietorship, or bank records.</p> <p>Documentation for revenue reduction requirements may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, quarterly financial statements or bank statements. (For businesses who do not have quarterly financials, an option of year over year (2019 vs 2020) is allowed)</p> <p>Documentation for self-employed borrowers must include the 2019 or 2020 (whichever you used to calculate loan amount) Form 1040 Schedule C with your PPP loan application to substantiate the applied-for PPP loan amount and a 2019 or 2020 (whichever you used to calculate loan amount) IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed. If using 2020 to calculate loan amount, this is required regardless of whether you have filed a 2020 tax return with the IRS. You must provide a 2020 invoice, bank statement, or book of record to establish you were in operation on or around February 15, 2020.</p> <p>Note: The documentation required to substantiate an applicant’s payroll cost calculations is generally the same as documentation required for First Draw PPP Loans. However, no additional documentation to substantiate payroll costs will be required if the applicant (i) used calendar year 2019 figures to determine its First Draw PPP Loan amount, (ii) used calendar year 2019 figures to determine its Second Draw PPP Loan amount (instead of 29 See subsections (B)(4)(b) and (B)(4)(e) of the Consolidated First Draw PPP IFR. 16 calendar year 2020), and (iii) the lender for the applicant’s Second Draw PPP Loan is the same as the lender that made the applicant’s First Draw PPP Loan. In such cases, additional documentation is not required because the lender already has the relevant documentation supporting the borrower’s payroll costs.</p>	<p>Guidance on Maximum Loan Amount and Documentation Requirements</p> <p>2nd Draw Calculations and Documentation Q&A</p>
Audit and Review Process for Loans over \$150,000	<p>Not later than 45 days after enactment of this Act, the SBA will submit an audit plan to the Committees on Small Business and Entrepreneurship of the House and Senate the following:</p> <ol style="list-style-type: none"> 1. Policies and procedures for conducting forgiveness reviews and audits 2. Metrics used to determine which loans will be audited 	
Lender Processing Fees	<p>Loans up to \$50,000 -50% of loan amount or \$2,500 whichever is less</p> <p>Loans \$50,001 to \$350,000- 5% of loan amount</p> <p>Loans over \$350,000-3 % of loan amount</p>	
Agent Fees	<p>A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent.</p>	

Standard Procedures	Allows lenders to use existing SBA Standard Operating Procedures to the extent possible for PPP loans.	SBA SOP
EIDL Advance Deduction Repeal	The Economic Aid Act repealed the CARES Act provision requiring SBA to deduct EIDL Advance Any EIDL Advance Amounts previously deducted from a borrower’s forgiveness amount will be remitted to the lender, together with interest to the remittance date.	EIDL Deduction Repeal Guidance
Covered Period	Allows the borrower to use the 8-week or 24-week covered period The borrower may also use a covered period: <ul style="list-style-type: none"> • Beginning on the date of loan origination, and • Ending on a date <ul style="list-style-type: none"> ○ After the end of the 8th week after loan origination, and ○ Before the end of the 24th week after loan origination. 	
Bank Officer and Director PPP Loans	Pre-existing SBA limits on these applicants’ eligibility shall not apply to otherwise eligible businesses owned in whole or part by outside bank directors or those holding a less-than-30% equity interest in the PPP lender, provided that the eligible business follows the same process as any similarly situated customer or account holder and does not receive favoritism. However, officers and key employees of the bank may not obtain a PPP loan from their own bank but may apply at a different lender.	
Hold Harmless	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). 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.	
Additional Information	For the most up to date information, you can go to the SBA Lender Information Page.	SBA Lender Guidance Page

© Independent Bankers Association of Texas, Austin, Texas, 2020. All rights reserved.

This document is intended to convey general information only and not to provide legal advice or opinions. This document (and the posting and viewing of the information on the IBAT website) should not be construed as legal advice, may not be current and is subject to change without notice.