
Recent SBA PPP Guidance: Simplified Process for Forgiveness, Notifying Borrowers of Changes in the Deferral Period, and EIDL Advance Deductions from Forgiveness

Simplified Process for Loan Forgiveness, Form 3508S

- On October 8, SBA released a simplified forgiveness [application](#) and [instructions](#) for borrowers with a PPP loan of \$50,000 or less (other than borrowers that together with affiliates received loans totaling \$2 million or more), as well as an [interim final rule](#) governing use of the new form.
- Borrowers that use the new SBA Form 3508S are exempt from (i) any reductions in the borrower's loan forgiveness amount based on reductions in full-time employees or (ii) reductions in employee salary or wages, and need not make these calculations. These exemptions are not available to borrowers using the SBA Form 3508 or 3508EZ (though those borrowers may qualify for a safe harbor).
- When a borrower submits SBA Form 3508S, the lender must only: (i) confirm receipt of the borrower certifications contained in the SBA Form 3508S and (ii) confirm receipt of the supporting documentation the borrower must submit showing payroll and nonpayroll costs incurred and paid.
- SBA says that providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower.
- In creating Form 3508S, SBA relied on the CARES Act grant of authority to the agency to make *de minimis* exemptions to the law's requirements. Of the 3.5 million loans of \$50,000 or less (totaling \$62 billion), only \$49 billion or 9 percent of the overall PPP loan amount were loans to borrowers with at least one employee other than the owner.
- ICBA has created a chart (below) which shows the lender's reviewing responsibilities when using Form 3508, Form 3508EZ or Form 3508S.

Requirements to Notify Borrowers of Changes in the Deferral Period

- The Paycheck Protection Program Flexibility Act of 2020 (Flex Act) automatically extended the deferral period (originally six months from disbursement) for borrower payments of principal, interest and fees on all PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's covered period.
- For PPP loans that were originated by lenders soon after the program was initiated in early March, the original six-month deferral period is about to end.
- The SBA recently issued [FAQ 52](#) advising lenders that they should notify borrowers of the change to the deferral period mandated by the Flex Act but a formal modification of the promissory note is not required. If the bank elects to modify the promissory note to reflect the

new required statutory deferral period, it will have no effect on the SBA's guarantee of the PPP loan.

- Lenders should include in the notice that the deferral period has been changed as a result of the Flex Act and that the period has been extended to the earlier of (a) the date that SBA remits the borrower's loan forgiveness amount to the lender, or notifies the bank that no forgiveness will be paid, or (b) if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period.
- Lenders should also consider explaining in their notices the loan forgiveness covered period (the covered period ends the earlier of 24 weeks after the date of disbursement or Dec. 31, 2020, except that borrowers with loans made before June 5, 2020 may opt to use the original 8-week covered period).
- While a formal loan modification is not required at this time, lenders will need to consider modifying the loan documents to reflect a new payment amount and payment schedule if there is a balance remaining on the loan after forgiveness.
- With regard to PPP loan servicing systems, lenders should consider showing the first due date on loans as 10 months after the end of the borrower's covered period and then updating that date once forgiveness is remitted by the SBA.

EIDL Advance Deductions from Forgiveness

- SBA recently informed lenders that the forgiveness platform will show any Economic Injury Disaster Loan (EIDL) Advances or grants (up to \$10,000) provided to any PPP borrower when the lender submits its forgiveness decision. SBA will deduct EIDL Advance amounts from the forgiveness amount as per the CARES Act. SBA reminds lenders not to adjust forgiveness calculations for EIDL Advances when submitting forgiveness applications; SBA will automatically make the deduction.
- Confusing and misleading information surrounding the interaction of EIDL Advances and PPP loans means many borrowers and lenders will be surprised by these reductions in forgiveness. ICBA has been [seeking a remedy](#) to this problem and continues to urge SBA to address it.
- SBA's [website](#) now has a clearer explanation of the interaction between EIDL Advances and PPP loans:

EIDL Advance was a grant program offered together with the economic injury loan program. The amount of the grant was determined by the number of employees indicated on the EIDL application: \$1,000/employee, up to a maximum of \$10,000.

- EIDL Advance does not have to be repaid.
- Recipients did not have to be approved for an EIDL loan to receive the EIDL Advance.
- The amount of the loan Advance was deducted from total loan eligibility.
- Businesses who received an EIDL Advance in addition to the Paycheck Protection Program (PPP) loan will have the amount of the EIDL Advance subtracted from the forgiveness amount of their PPP loan.

All available funds for the EIDL Advance program have been allocated. SBA is not able to issue EIDL Advances once program funding has been obligated and is no longer available.

Forgiveness Filing Form	Who can file?	Lender review responsibilities
SBA Form 3508	All borrowers	<ul style="list-style-type: none"> • Confirm receipt of the borrower certifications contained in the SBA Form 3508 or lender’s equivalent form. • Confirm receipt of the documentation borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508 or lender’s equivalent form. • Confirm the borrower’s calculations on the borrower’s SBA Form 3508 or lender’s equivalent form, including the dollar amount of the (A) cash compensation, noncash compensation, and compensation to owners claimed on lines 1, 4, 6, 7, 8, and 9 on PPP Schedule A and (B) business mortgage interest payments, business rent or lease payments, and business utility payments claimed on lines 2, 3, and 4 on the PPP loan forgiveness calculation form, by reviewing the documentation submitted with the SBA Form 3508 or lender’s equivalent form. • Confirm that the borrower made the calculation on line 10 of the SBA Form 3508 or lender’s equivalent form correctly, by dividing the borrower’s eligible payroll costs claimed on line 1 by 0.60. • Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application Form. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower’s calculations and supporting documents concerning amounts eligible for loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs are not documented with such recognized sources, more extensive review of calculations and data would be

		<p>appropriate. The borrower shall not receive forgiveness without submitting all required documentation to the lender.</p> <ul style="list-style-type: none"> • Lenders may rely on borrower representations. If the lender identifies errors in the borrower’s calculation or material lack of substantiation in the borrower’s supporting documents, the lender should work with the borrower to remedy the issue. The lender does not need to independently verify the borrower’s reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.
SBA Form 3508EZ	<p>One of the three criteria below must be met:</p> <ol style="list-style-type: none"> 1. The borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form (SBA Form 2483). 2. The borrower both: <ol style="list-style-type: none"> a. did not reduce annual salary or hourly wages of any employee by more than 25 percent during the covered period or the alternative payroll covered period (as defined in the loan forgiveness form application instructions) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000); 	<ul style="list-style-type: none"> • Confirm receipt of the borrower certifications contained in the SBA Form 3508EZ or lender’s equivalent form. • Confirm receipt of the documentation borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508EZ or lender’s equivalent form. • Confirm the borrower’s calculations on the borrower’s SBA Form 3508EZ or lender’s equivalent form, including the dollar amount of the payroll costs, business mortgage interest payments, business rent or lease payments, and business utility payments claimed on lines 1, 2, 3, and 4 of the SBA Form 3508EZ or lender’s equivalent form, by reviewing the documentation submitted with the SBA Form 3508EZ or lender’s equivalent form. • Confirm that the borrower made the calculation on line 7 of the SBA Form 3508EZ or lender’s equivalent form correctly, by dividing the

	<p>b. did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the covered period. (Ignore reductions that arose from an inability to rehire individuals who were employees on February 15, 2020 if the borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Also ignore reductions in an employee's hours that the borrower offered to restore and the employee refused. See 85 FR 33004, 33007 (June 1, 2020) for more details.)</p> <p>3. The borrower both:</p> <p>a. did not reduce annual salary or hourly wages of any employee by more than 25 percent during the covered period or the alternative payroll covered period (as defined in the loan forgiveness form application instructions) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, "employees" means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000);</p> <p>b. was unable to operate during the covered period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 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, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.</p>	<p>borrower's eligible payroll costs claimed on line 1 by 0.60.</p> <ul style="list-style-type: none"> • Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application Form. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. By contrast, if payroll costs are not documented with such recognized sources, more extensive review of calculations and data would be appropriate. The borrower shall not receive forgiveness without submitting all required documentation to the lender. • Lenders may rely on borrower representations. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue. The lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.
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<p>SBA Form 3508S</p>	<p>A borrower of a PPP loan of \$50,000 or less, other than any borrower that together with its affiliates received loans totaling \$2 million or greater. A borrower that uses SBA Form 3508S (or lender’s equivalent form) is exempt from any reductions in the borrower’s loan forgiveness amount based on reductions in full-time equivalent (FTE) employees or reductions in employee salary or wages that would otherwise apply.</p>	<ul style="list-style-type: none"> • Confirm receipt of the borrower certifications contained in the SBA Form 3508S or lender’s equivalent form. • Confirm receipt of the documentation the borrower must submit to aid in verifying payroll and nonpayroll costs, as specified in the instructions to the SBA Form 3508S or lender’s equivalent form. • Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application. The borrower shall not receive forgiveness without submitting all required documentation to the lender. Lenders may rely on borrower representations. The lender does not need to independently verify the borrower’s reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.
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