



Paycheck Protection Program (PPP) loans, but also for Economic Injury Disaster Loans (EIDLs)--loans administered by the SBA as detailed in the PSR at 14-16. When agents interviewed Acuff on September 3, 2020, she admitted to falsifying the PPP loan application, and to obtaining an SBA disaster loan (an EIDL) by fraud. *PSR at 37*. Stout and Watson also admitted to applying for EIDLs. *PSR at 36 & 40*.

Undersigned counsel obtained the EIDL application data for all three defendants after their guilty pleas and has since provided the application data for these loans to defense counsel. As to Stout and Acuff, the application data confirmed their interview statements. The United States asserts that this application information, given under penalty of prosecution, is false, and relevant for the Court's consideration.

The EIDL information is relevant conduct because it is an "act . . . willfully caused by the defendant" involving the same victim, accomplice, purpose, and modus operandi as her crime of conviction, and occurred near in time to it. U.S.S.G. § 1B1.3(a)(1). "Relevant conduct under the guidelines need not be charged to be considered in sentencing, and it includes all acts and omissions 'that were part of the same course of conduct or common scheme or plan as the offense of conviction.'" *United States v. Radtke*, 415 F.3d 826, 841 (8th Cir. 2005) quoting U.S.S.G. § 1B1.3(a)(2). In determining what is relevant conduct, the Court enjoys wide discretion in the documents and evidence it may consider at sentencing. *See* U.S.S.G. § 6A1.3, Commentary (citing *United States v. Watts*, 519 U.S. 148, 154 (1997) (noting that sentencing courts have traditionally considered a wide range of information without the procedural protections of a criminal trial, including information concerning criminal conduct that may be the subject of a subsequent prosecution.))

The EIDL documents, in conjunction with Stout’s and Acuff’s admissions that they applied for the EIDLs, chins the bar of the preponderance burden the Government bears in showing that each made additional false statements under oath. *United States v. Mustafa*, 695 F.3d 860 (8th Cir. 2012); *United States v. Tyndall*, 521 F.3d 877 (8th Cir. 2008). Inclusion of this information does not increase any statutory maximum penalties for Acuff. *United States v. Villareal-Amarillas*, 562 F.3d 892 (8th Cir. 2009) (“In the preset advisory Guidelines regime, facts found at sentencing merely inform the judge’s discretion; they do not increase the maximum sentence to which a defendant is otherwise exposed.”). The EIDL information is appropriate relevant conduct, and the United States is prepared to present that evidence to the Court at the time of sentencing if necessary.

## 2. Defendant’s Objections to Loss Amount.

From the outset, the United States viewed this case as one where Stout helped his wife and sister file loan applications with false information, not an open conspiracy amongst the three. The available evidence points to Stout as an opportunist driving the conduct, not some coordinated group operation. He is responsible for the loss incurred by himself, his sister, and his wife. What Watson and Acuff are accountable for is less clear. As set forth in the PSR, the following seven transactions are at issue in the Stout/Watson/Acuff cases (including one, Transaction 1, which is not found in Acuff’s PSR for reasons explained below).

| Transaction Number | Date of Loan Application | Loan Type | Applicant Name | Intended Loss | Actual Loss |
|--------------------|--------------------------|-----------|----------------|---------------|-------------|
| 1                  | 04/17/2020               | PPP       | Stout          | \$9,458.90    | \$9,400.00  |
| 2                  | 04/29/2020               | PPP       | Acuff          | \$20,833.33   | \$20,800.00 |
| 3                  | 05/11/2020               | PPP       | Watson         | \$20,833.33   | \$0         |
| 4                  | 05/22/2020               | EIDL      | Stout/Acuff    | \$27,000.00   | \$6,000.00  |
| 5                  | 06/16/2020               | EIDL      | Acuff          | \$28,400.00   | \$28,400.00 |
| 6                  | 06/19/2020               | EIDL      | Stout          | \$0           | \$0         |
| 7                  | 06/22/2020               | EIDL      | Watson         | \$10,000.00   | \$10,000.00 |

The United States agrees (with Acuff and the PSR) that criminal conduct occurring prior to April 29, 2020 should not count toward Acuff's loss amount. (“[A] defendant’s relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct...”). U.S.S.G. § 1B1.3 Application Note 3(B). The United States cannot show that Acuff played any role in the PPP loan application that preceded hers.

The United States further agrees with Acuff that she should not shoulder any loss resulting from Watson’s subsequent participation in the scheme, which includes the May 11, 2020 PPP loan and the June 22, 2020 EIDL application. (Transactions 3 & 7) Whether these loan applications are relevant conduct turns on whether Watson and Acuff were involved in “jointly undertaken criminal activity,” and whether the May 11, 2020 PPP loan and the June 22, 2020 EIDL application was a) within the scope of that activity, b) was in furtherance of that activity, and c) reasonably foreseeable in connection with that activity. U.S.S.G. § 1B1.3(a)(1)(B).

A “jointly undertaken criminal activity” is a plan or scheme undertaken by the defendant in concert with others. *Id.* There was undoubtedly *some* jointly undertaken criminal activity here--an agreement by Stout and Acuff (and by Stout and Watson) to file a loan application with false information. The scope of those agreements is unclear, but determinative. (“The Court must first determine the scope of the criminal activity the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant’s agreement.)”) (U.S.S.G. § 1B.3 Application Note 3(B)).

Undersigned counsel can find no analogous test under this Circuit’s caselaw, but the Seventh Circuit’s scope-of-activity rubric is instructive. There, the court considers 1) whether there existed a single scheme; 2) similarities in modus operandi; 3) coordination of activities

among schemers; 4) pooling of resources or profits; and 5) knowledge of the scope of the scheme. *United States v. Salem*, 657 F.3d 560, 564 (7th Cir. 2011). The difficulty in defining the scope in this case is the paucity of reviewable transactions and lack of any captured communications. There are no text messages or intercepted phone calls providing insight into the relationships between Stout, Acuff, and Watson. Unlike those crimes involving dozens of transactions that imply coordination, here we have only seven transactions spread over two months. Those transactions are not overly complex, such that they would require a great deal of organization.

With the available facts, the United States concedes it is unlikely that it can show that Acuff and Watson knew of each other's submission of false loan applications, participated in the other's submissions, or that the conduct was foreseeable to either. On one hand, Watson and Acuff share a common relative and residence, which is damning. The loan documents each submitted are very similar. Past that, though, there are no statements to support a joint undertaking, nor do the documents nod toward any agreement between them. Stout says there was no profit-sharing agreement. *PSR at 36*. The money does not appear to have been mingled, Watson's and Acuff's (and Stout's) loans were each deposited into their respective bank accounts and spent in the normal course. Acuff, who was otherwise honest with law enforcement, says she did not know anyone else was applying for the loans, implying she did not discuss it with Watson. *PSR at 38*. The United States has no additional evidence to refute that assertion. Watson instead approached Stout and asked for guidance in completing the applications. *PSR at 37*. It was Stout's handwriting on the falsified documents associated with both Acuff's and Watson's loan applications, again placing him as the nexus of the activity. *PSR at 35*.

Whether Acuff is accountable for the May 22, 2020 EIDL filed by her and/or Stout is also disputed (Transaction 4 in the above chart). Because the EIDLs are an online application process,

it is not clear who was ultimately responsible for entering and submitting the data on the May 22, 2020 application. The money was ultimately directed to Stout's bank account. *PSR at 28*. Stout acknowledged in his interview that he had received SBA disaster funds (an EIDL), suggesting he was the driver of this loan. *PSR at 36*. But even if Acuff did not enter the information herself, she could reasonably foresee her husband continuing to seek out and apply for additional pandemic-related financial aid. If the agreement between them was, as the United States suggests, a loose pact to seek out available pandemic-related funds, this fits squarely into its scope. The Court can draw this reasonable inference from Stout's and Acuff's marital relationship, shared financial resources, common residence, conspiracy on the previous PPP loan, and the timing and similarity of the various applications. The EIDL process, though slightly different, involves a common victim, and the fraud was conducted in a near-identical manner, i.e., presenting false statements in loan applications.

The United States thus submits that Stout's May 22, 2020 EIDL is relevant conduct to Acuff, and that Acuff's intended loss amount in this case is \$76,233.33 (Transactions 2, 4, & 5 in the above chart). Because the intended loss amount sits between \$40,000 and \$95,000, Acuff should receive a six-point increase to her base offense level. *See* U.S.S.G. § 2B1.1(b)(1)(D). If the Court instead construes the EIDL applications as an enterprise separate from the PPP loan applications and that Acuff is not responsible for that loss amount, having joined that after Stout, then Acuff's intended loss amount is \$49,233.33, still resulting in a six-level increase to her offense level. U.S.S.G. § 2B1.1(b)(1)(D).

**3. Sentencing Factors.**

To arrive at a just sentence, the statute directs the Court to consider the familiar factors at 18 U.S.C. § 3553(a). When the facts of Acuff's offense and personal history are applied to those criteria, the United States submits a sentence at the low end of the Guidelines Range is appropriate.

*a. Nature and Circumstances of the Offense and the History and Characteristics of the Defendant. (18 U.S.C. § 3553(a)(1)).*

The Coronavirus pandemic has claimed more than half a million American lives, affected the mental and physical health of millions more, and led to widespread unemployment and financial hardship. Meanwhile, Acuff and her husband viewed this as an easy opportunity to take money the U.S. Government earmarked for those most in need. While the loss amount here is less than the typical federal case, it is the source and intention of these funds that renders this crime a heinous one. While it doesn't negate her involvement here, the evidence suggests that Acuff followed her husband's lead in committing the crime. She was certainly a willing participant, but she did not generate the idea and she did not create the falsified tax documents that accompanied her loan application.

Acuff's history and characteristics are generally mitigating. Her participation in this crime is at odds with her otherwise law-abiding life. She has steady work and a growing family. Under the circumstances, the United States submits that a sentence at the low end of the Guidelines Range would accomplish the statute's aims.

*b. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, To Promote Respect for the Law, and to Provide Just Punishment for the Offense. (18 U.S.C. § 3553(a)(2)(A)) & Need for the Sentence Imposed to Afford Adequate Deterrence To Criminal Conduct and Protect the Public from Further Crimes. (18 U.S.C. § 3553(a)(2)(B-C)).*

While the offense is serious, a sentence at the low end of the Guidelines would adequately promote respect for the law and punish Acuff. In addition to any incarceration or probation

imposed upon Acuff, her restitution obligation is substantial, and will take years to pay. Though it is improbable that Acuff will commit another financial crime, the sentence here should provide general deterrence to others who would use the pandemic for financial gain.

**CONCLUSION**

Considering the factors set forth at 18 U.S.C. § 3553(a), the United States respectfully requests the Court impose a sentence at the low end of the Guidelines Range.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Hunter Bridges, hereby certify that on March 17, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. In addition, I deposited in the United States mail a copy to the following:

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