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**Huddle: PPP Edition Top Submitted FAQs April 22, 2020**

\*All the information contained in this FAQ is advisory in nature and is not intended to offer any legal or tax advice. Because this is a rapidly changing environment, all of the information included in this Manual is accurate as of ***April 29, 2020*** so keep in mind information may become inaccurate as more regulatory guidance unfolds. Any definitive guidance must be coming from the SBA, Treasury, your governing regulator, along with other governmental agencies.

**PPP Questions:**

**Q1: How are we supposed to handle the PPP loans in cash flow calculations going forward?**

**A1:** Loan forgiveness in relation to statement of cash flows is not clearly defined. The classification within the statement of cash flows requires bank judgment. Many banks are considering how funds will be used in their determinations. PPP loans are technically forgivable loans, and there is the argument that they would be considered a loan advance, making the original loan proceeds classified as a financing activity.

However, it can also be argued that since the loan proceeds are used for operations and related expenses are recorded in operations, proceeds are recorded within operating activities. There are arguments for both approaches for the portion of the loan that is forgiven. If a portion is not forgiven and is repaid, then the proceeds and payments would generally be reflected as financing activities.

Ultimately this boils down to the bank’s own credit risk, assumptions and appetites. Banks are going to have to leverage best- and worst-case scenarios (100% forgiveness to 0% forgiveness) and evaluate it based on the bank’s credit policy and how concentrated that loan portfolio is. This is going to be an ongoing reassessment during this 8-week covered period all determined by the bank’s monitoring schedule.

**Q2: Can you please address whether lenders are required to pay agent fees under the PPP if the lender disputes or disagrees with such a charge?  Is any further guidance on this issue (other than what is already in Interim Rule #1) expected from the SBA?**

**A2:** This is a massively grey area currently. There is nothing in the PPP Rule or guidance that indicates a bank is absolutely required to pay these agent fees. Furthermore, existing SBA guidance for standard 7(a) loans heavily point to this not being an actual requirement unless known or agreed to by the bank in advance, as demonstrated here:

The law itself requires business owners to “certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons.” 15 USC 642.

Also, the SBA’s standard operating procedures 50 10 5(J) state on p. 165:

“Section 13 of the Small Business Act (15 U.S.C. §642) requires that an Applicant identify the names of persons engaged by or acting on behalf of the Applicant for the purpose of expediting the application and the fees paid or to be paid to any such person.”

Finally, the SBA regulations at 13 CFR §103.5 require “any Agent to execute and provide to SBA a compensation agreement (‘Agreement’)”, as does the SBA form used for this purpose, which is SBA Form 159 here: <https://www.sba.gov/sites/default/files/2018-09/Form%20159%20-%20%28FINAL%29%209.10.18.pdf>

Unfortunately, this is only in reference to standard 7(a) loans as the PPP does not address this at all. Currently, it is unclear to what extend the above applies to PPP loans. But in the total absence of guidance, Compliance Alliance does view the above citations at least as some indicator of intent. The few members C/A has talked to have either paid the agent fees or are consulting with bank counsel on the risks that the bank may incur for not paying them. At the end of the day, if the SBA/Treasury do not directly address this, a court would have to decide.

**Q3: What does “alternative assumptions considered, and why alternative assumptions were not used” mean in the PPP Interim Final Rule regarding lender reports for requesting advance purchase with an expected forgiveness amount to the SBA?**

**A3:** Alternative assumptions are in relation to the report submitted by the lender to the SBA in requesting an advance purchase with estimated expected forgiveness amounts. These are assumptions the bank is basing its decision on in estimating the forgivable loan amount. It is merely talking about what methods you are using to base your calculations on (your base assumptions), and then any case-by-case additional assumptions outside of your standard realm or calculation that may have been applicable to an individual loan or pool of loans.

**Q4: Has there been any guidance on sole proprietors/self-employed individuals with ITINs?  Do these individuals qualify to apply for PPP?**

**A4:**  There still remains no specific guidance on applicants who have ITINs versus EINs or SSNs at this time.

**Q5: If the PPP requires an active status with the Secretary of State but they are backlogged 10-20 days, would a paid receipt be enough to close as the Secretary of State would backdate the active status back to the paid date?**

**A5:** Conservatively, this may not be the most viable proof to rely on in closing a loan to verify active status. The Secretary of State could come back after the timeframe and determine the active status is not applicable to the borrower (but at that point in time, the bank has already closed and/or funded the loan). Oftentimes, Secretary of State websites will include a way to verify this online.

**Q6: Are banks filling in the State Specific Legal Conditions area of the 147 Note?**

**A6:** Compliance Alliance wants to note that State requirements are still applicable to your promissory notes as it relates to any additional requirements outside those in the PPP realm. Always consult with legal counsel when drafting promissory notes or using a sample stock form for all contractual and state requirements.

**Q7: If an owner of an LLC does not draw a paystub from the LLC, but instead gives himself a 1099, does he qualify for a PPP loan? He provided a 1096 form for taxes.**

**A7:** This ultimately would hinge on how the LLC is taxed. If the LLC is taxed as a sole proprietor or general partnership, it would need to go off of the 2019 Net Profit (Line 31 of Schedule C). The borrower could include draws if they are subject to payroll tax or self-employment taxes, however. If the LLC were taxed as an S- or C-Corporation, this would likely be coming from W-2 income. For LLC’s taxed as an S- or C-Corporation, non-taxed draws cannot be included.

**Q8: How would a Financial Institution apply for the PPP program or what are the requirements?  I've read that $30 billion will be provided for financial institutions below $10 billion in assets.**

**A8:** At this time, the allotted funds are what lenders are capped at based upon their institutions’ respective size. It is to ensure that funds are being distributed to general applicants who would seek financial assistance from those institutions. As of now, the definition of who is applicable to apply has not changed from the first round of the PPP.

**Q9: Can you speak to BSA KYC “expected behavioral” questions for the deposit accounts being opened specifically to fund the SBA PPP loan proceeds and for customers to use only for intended purposes.**

**A9:** The bank would be required to follow its normal procedures for CIP compliance, including EDD, beneficial ownership and KYC for these customers, keeping in mind the purpose of these accounts is to assist the bank in monitoring proper usage of funds, as well as assist the customer is access to funds for ease of use. There are no concessions that are applicable to opening of PPP accounts when it comes to BSA/AML requirements and bank internal policies and procedures.

**Huddle Miscellaneous Questions Answered by Participants:**

**Q1. Appraisals: How are banks handling the new Appraisals guidance exception? Use or process remains unchanged?**

A1: This is specifically related to forms provider Wolters Kluwer’s 2019.3 Release, which updated the Terms & Conditions. In order to maintain the compliance warranty on the new provisions for existing customers, change in terms notification is required.

A2: We do not plan to change our appraisal process at this time.

**Q2: Capitalization of interest to assist borrowers during COVID-19?**

A1: We are not capitalizing interest on loans at this time.  We did discuss if mortgage loans continued to be an issue after 6 months, we may try to re-finance the mortgage payments including the interest, but we would have to have regulator okay or guidance about that.