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**Huddle: PPP Edition Top Submitted FAQs April 29, 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 ***May 6, 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: Please review loan disbursement requirements again.**

**A1:** Lenders are required to make a one-time, full disbursement of the PPP loan proceeds within 10-calendar days of loan approval. Loan approval is the date the lender receives an SBA loan number on the file. If loans received an SBA loan number prior to the posting of the FAQ initiating these clarifications, and the lender did not distribute fully the PPP loan funds, the lender has 10-calendar days beginning April 28th, 2020 to transfer the remaining loan fund balance to the borrower. Additionally, the 8-week covered period will have been deemed to have begun on the date of the *first* disbursement by the lender to the borrower of PPP loan funds.

Lenders are not responsible for delays in disbursement that are the result of a borrower’s failure to timely provide required loan documentation, including a signed promissory note. If borrowers do not submit their required documentation within 20-calendar days of approval, the loan will be cancelled. How this impacts the lenders is that lenders must fully disburse the loan and file the yet-to-be-released SBA Form 1502 within 20-calendar days after the loan is approved in order to receive their owed lender processing fee(s). Loans approved before the Form 1502 is released must file the form by May 18. Borrowers who cancel loans before disbursement or voluntarily terminate a loan and repay it after disbursement means the bank will not receive a processing fee.

Additionally, it is important that banks remember, if they are setting up accounts for purposes of PPP loan funds distribution, those accounts should be voluntary, segregated accounts and not control accounts. And conservatively fees should not be imposed on these accounts.

Resource: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Disbursements.pdf>

**Q2: Can owners’ draws or any net income be used for S-Corporations?**

**A2:** Generally, not**.** When dealing with S-Corporations, owner draws are generally known as shareholder distributions. Distributions are non-taxable. Owners of S-Corps are required to pay themselves reasonable salaries through payroll, whereby they are remitting payroll taxes on that amount. Allowable distributions can be in addition of this salary, but common practice is to have a combination of the two rather than just distributions alone. Applicants and the bank should always be consulting with a tax professional as well.

**Q3: Is there any update on how to report PPP loans to the credit bureaus?**

**A3:** At the time of this FAQ, there has been no additional guidance in relation to PPP loans and whether or not they fall under general SBA 7(a) loan credit reporting requirements.

**Q4: When do banks have to pay agent fees by?**

**A4:** At the time of this FAQ, no additional guidance has been provided regarding a timeframe requirement lender must meet when issuing agents their fees. Additionally, the use of agents in relation to PPP loans remains vague as well. None of the current guidance clarifies when an agent can require payment from the lender. Generally, with 7(a) loans, an agent’s appointment must be documented in Form 159 “[Fee Disclosure Form and Compensation Agreement](https://www.sba.gov/sites/default/files/2018-09/Form%20159%20-%20%28FINAL%29%209.10.18.pdf).” Some lenders are, as part of the loan process, asking borrowers if they have engaged an agent to assist with the application, and if the answer is “yes,” are requiring an “agent agreement” between the lender and the agent.

**Q5: If you "withdraw" an application in the SBA Portal due to error entering in the application, so you withdraw and start brand new one will those have to be reported, on 1502? The application was never submitted, we just "withdrew" it and started over.**

**A5:** The purpose of Form 1502 is to collect payment and loan information. It is for loans with an outstanding SBA guaranty, regardless of payment activity. The reporting period includes the first calendar day through the last calendar day of the prior month. Lenders are required to notify the SBA of cancelled or withdrawn loans promptly.

**Q6: Will that new 1502 form be reported to SBA or to Colson Services?**

**A6:** SBA SOP 50\_10 Lender Reporting requires the use of electronic media to submit monthly 1502 Forms to SBA’s Fiscal Transfer Agent (FTA), Colson Services Corp. Completed forms are to be submitted to Colson Services Corp.

**Q7: With EIDL and PPP loans, how are banks to handle EIDL funds that have already been disbursed to the borrower?**

**A7:** Lenders are required to send any amount of loan proceeds designated for the refinance of an EIDL loan directly to the SBA and not the borrower. Unfortunately, this is not clearly expressed in the guidance:

"If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to $10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan."

Resource: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>

The funds should not be going to the customer so if the EIDL was issued prior to the PPP loan funds, at this time it is not clear how banks and borrowers are to treat forgiveness for the EIDL amount that was included in the calculation.

The SBA is doing a series of calls regarding PPP and EIDLs so the hope is that they will add more clarity through these:

PPP and EIDL Program Overview
Monday-Friday, May 4-8, 3:00pm CDT
<https://content.govdelivery.com/accounts/USSBA/bulletins/289853a>

**Miscellaneous COVID-19 Banking Questions**

**Q8:  Are there guidelines/requirements for a bank to reach out to customers who may have been served by a banker that tested positive for COVID-19?**

**A8:** At a minimum, each states’ Department of Health will have guidelines on what to do if someone was potentially exposed to a confirmed case of COVID-19. It will define close contact and monitoring requirements. Additionally, banks should be holding any medical information in line with HIPPA requirements, as well as following the ADA’s employee medical record requirements.

**Q9: For banks that have waived fees due to COVID-19, will advance 30-day notice be required when reinstating fees?**

**A9:** Assuming these are fees subject to Regulation DD, yes, advance notice would be required per 1030.5:

“1. Form of notice. Institutions may provide a change-in-term notice on or with a periodic statement or in another mailing. If an institution provides notice through revised account disclosures, the changed term must be highlighted in some manner.”

Resource: <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1030/5/#5-a-1-Interp-1>

**Q10: For the upcoming Reg CC changes, can we provide the funds availability changes via our monthly newsletters or are we required to notify our customers via their statements?**

**A10:** Reg CC permits a change in terms notice to be given in any form, as long as it is clear and conspicuous. This has been interpreted to mean it can be included “on” or “with” periodic statements. When a chance in policy expedites the consumer’s ability to use funds, the Regulation requires disclosure of the change within 30 days after implementation. Nothing prohibits the bank from implementing changes prior to July 1st. Some institutions are choosing to update disclosures and provide change notices earlier in the year, at the same time as other routine service charge change notices. The bank needs to make sure it is updating disclosures, sending change notices, reviewing and updating your Funds Availability posters, revising training materials, and updating hold notices, terms and conditions, policies and procedures and, if applicable, your IT systems.

For C/A members, there is a sample template of this notice found here: <https://compliancealliance.com/find-a-tool/tool/regulation-cc-change-in-terms-notice-for-new-adjusted-amounts>

**Q11: Can outside counsel fees for loans in forbearance be passed on to the borrower?**

**A11:** Whether or not this permissible would depend on state law guidance and/or your loan terms and conditions or forbearance agreement. Always consult with legal counsel.