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**Huddle: PPP Edition Top Submitted FAQs May 6, 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 12, 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: Can you review again what the IRS stance is on stimulus checks to deceased recipients and what a bank’s responsibilities are?**

**A1:** The IRS has recently issued guidance that they require stimulus checks made out to deceased taxpayers to be returned to the IRS. If they were sent by mail, they should be voided and mailed back to the IRS. If the payments were made via direct deposit or if the check was cashed, the taxpayer should write a personal check or money order to the IRS and mail the funds. The IRS also clarified that other people who may have received a payment but are ineligible, including those who are incarcerated, must also return the money. Further instructions for *recipients* was posted online by the IRS, which can be found here: <https://www.irs.gov/coronavirus/economic-impact-payment-information-center#more>.

However, this information is not directed to financial institutions but rather, solely to recipients. A financial institutions roles and responsibilities are outlined in the Treasury’s Economic Impact Payments Operational FAQs for Financial Institutions form, updated May 1, 2020, found here: <https://www.fiscal.treasury.gov/files/news/eip-operational-faqs-for-financial-industry.pdf>.

Question 2.6 still states as follows:

2.6. How should RDFIs treat payments to deceased payees?

Unless the account is closed, you should generally post the funds in accordance with the payment instructions. ACH reclamation procedures apply only to benefit payments and therefore do not apply to economic impact payments. Last updated on May 1, 2020 3 For more information on how recipients can return economic impact payments to the IRS, please visit [IRS.gov/coronavirus](https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments).

The IRS link above takes them to the consumer-facing page for economic impact payments. Nothing has been specifically addressed or updated for financial institutions to change the practices outlined in the FAQ.

**​Q2: Can a non-U.S. citizen who has a local business apply for PPP loans?**

**A2:** At this time, there does not appear to be a general prohibition on a non-U.S. citizen applying and qualifying for a PPP loan—the condition of payroll costs and affiliation do still need to be considered when it comes to loan eligibility. One of the conditions for payroll costs is that “any compensation of an employee whose principal place of residence is outside” of the United States must be excluded. For affiliation, applicants in the PPP are generally subject to the affiliation rule under 13 CFR Section 121.301, which provide that in determining a concern’s size (and therefore loan eligibility), the SBA counts the employees of both the concern whose size is at issue and all of its domestic and foreign affiliates.

See generally:

(viii) the term ‘payroll costs’—

…

(II) shall not include—

…

(cc) any compensation of an employee whose principal place of residence is outside of the United States;  
Source: <https://www.congress.gov/bill/116th-congress/house-bill/748/text#HE4E7B1F84B384B0D92459C0BEB5AA857>

44. Question: How do SBA’s affiliation rules at 13 C.F.R. 121.301(f) apply with regard to counting the employees of foreign and U.S. affiliates?

Answer: For purposes of the PPP’s 500 or fewer employee size standard, an applicant must count all of its employees and the employees of its U.S and foreign affiliates, absent a waiver of or an exception to the affiliation rules. 13 C.F.R. 121.301(f)(6). Business concerns seeking to qualify as a “small business concern” under section 3 of the Small Business Act (15 U.S.C. 632) on the basis of the employee-based size standard must do the same.

Source: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

**​Q3: When inputting CRA loans, will Loan Type Option 3 be used to track the PPP loans?**

**A3:** There has not yet been specific guidance when it comes to CRA reporting and PPP loans at this time. Until further guidance, it would be assumed to report income as unknown for CRA as this was not asked for specifically.

The FDIC for general CRA concerns states the following guidance:

*5. If an institution that is not exempt from data collection and reporting does not request or Consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

No, In those instances the institution should enter " 3 " on the individual loan portion of the data collection software, or on an internally developed system, indicating "revenues not known."

Source: <https://www.fdic.gov/news/news/inactivefinancial/1996/fil9604b.html>

**​Q4: Should banks waive monthly deposit account service charges?**

**A4:** This is a grey area that the bank will need to make a risk-based decision on. There are restrictions on agent and lender fees as well as prepayment penalties, but no mention specifically of account-related fees. Some banks have been requiring that PPP funds be disbursed into a deposit account at the originating bank. Arguably, any fees associated with that account could be seen as a fee in connection with the PPP loan—this has the potential to be interpreted as a prohibited practice and may jeopardize the bank’s SBA guaranty and ability for forgiveness. There potentially is less of an issue if the bank is not requiring the borrower to open a deposit account for the purpose of distributing PPP funds—in this scenario, regular maintenance or account fees could be seen as not having been tied to the making of the PPP loan. But there is the potential that regular maintenance fees or account fees tied to the PPP loan funds required to be distributed into an originating bank’s deposit account could be seen as violating the Program.

So it’s important to remember that there is no provision in the CARES Act or SBA Interim Final Rules that says you expressly can or cannot charge deposit account fees—with that being said, the conservative interpretation is to not charge fees if there is an argument that the SBA could see this fee as being in connection with the PPP loan, as fees other than the processing fees listed out above may not be included.

Additionally, the bank needs to consider UDAAP concerns for waiving fees for certain customers. Documentation is going to be key in mitigating any of these potential risks.

**​Q5: For a business that was not open for the full year of 2019, October to December, can we use a Schedule C with the first part of this year?**

**A5:** The only available applicable guidance is as follows:

*\*As of April 13, 2020*

***14. Question: What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?***

*Answer: In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020. Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA’s usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).*  
Source: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

​**Advance Notice Questions:**

**Q6: For Reg D, if we provide notice via a statement message to our clients that the fee is temporarily being waived, would it be enough to notify them of the reinstatement of the fee via the statement message?**

**A6:** Reg DD’s requirement is for advance notice to be given to consumer when it will adversely affect them. This notice must be provided at least 30 calendar days before the effective date of the change (See generally 1030.5(a)(1)). With that being said, the Regulation further states that the notice can be “on or with a periodic statement, or in another mailing.” Or, if the institution “provides notice through revised account disclosures, the changed term must be highlighted in some manner.” These are the only permissible examples under the Regulation.

See generally 1030.5(a)(1) and Comment-1 here: <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1030/5/#a-1>

**Huddle Miscellaneous Questions and Answers from Participants:**

**Q1: Are banks waiving the 6-withdrawal limit on their non-transaction accounts for their customers?**

**Bank A A1:** No, bank wide, we are not. We consider waiving the limit on a case-by-case basis. Given the Fed’s recent interim rule revising Reg D, we are no longer tracking the limitation, and subsequently converting savings/MMDA accounts to transactional accounts. We do, however, charge for excessive withdrawals, and plan to continue doing so as part of the bank’s deposit and funding strategy.

**Bank B A1:** We have decided there are too many things in the air to disclose and change what we are doing/saying on Reg DD savings transfer limits.  There are just too many pots on fire on the stove right now to change that too.

**Q2: When are other banks planning on re-opening lobbies?**

**Bank A A1:** We’ve elected to move forward with an “appointment only” approach to our branches and do not plan to reopen them more widely anytime soon. This decision is aligned with our business model, customer base, where our branches are located. We do very little consumer banking and our branches had little traffic prior to COVID. I’d encourage banks to customize their reopening process in the same manner. What makes sense for them based on where there are located? What is their State’s COVID restrictions, their customer base and their available eBanking / mobile banking functionality, etc.?