

Accountants helped clients apply for PPP, some have sued banks over payment

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Aug 25, 2020, 3:33pm EDT

Accountants and other professionals want to see payment for work they did to help clients prepare Paycheck Protection Program applications during the coronavirus pandemic. But recent events suggest more challenges ahead as they pursue their anticipated fees.

As the Small Business Administration oversaw the federal Covid-19 relief program, the agency said it would handle paying the lenders and, by proxy, authorized representatives who helped a PPP borrower. Those agents could be an attorney, accountant, consultant, loan broker or other categories of people representing the applicant, according to the SBA.

The agency said the lenders who facilitated loans would be paid a fee between 1% and 5% depending on the size of the loan. Agent fees would come out of those lender fees, in a range of 0.25% to 1%.

In an interim final rule from April 15, the SBA determined: “Agent fees will be paid by the lender out of the fees the lender receives from the SBA. Agents may not collect fees from the borrower or be paid out of the PPP loan proceeds.”

That verbiage has been at issue in lawsuits across the U.S. Agents – accountants, in particular – say banks and other lenders are not passing along their share of the fees despite their work preparing clients’ applications to the forgivable loan program.

The agents say the SBA’s word choice, “fees will be paid,” indicates their fees should be forthcoming. But lenders counter that, that would be the case only if the agent and lender reached an agreement on the front end of the process.

“Many banks and other lenders interpreted it to say if there’s a contractual agreement with the agent, the total fee cannot exceed the schedule amount – it could be less,” said Sara McNamara, an attorney with Milwaukee law firm Reinhart Boerner Van Deuren’s banking

and finance group. “Many of the agents interpreted it to say we’re entitled to these fees no matter what, so the lender has to pay us in accordance with this schedule.”

Terry Hoover, a partner at accounting firm Wipfli LLP, said the SBA did not state explicitly during the PPP process that lenders had to accept borrowers’ appointment of agents. He said the guidance is an “ominous sign” of what will be the agency’s ultimate position.

“They’ve basically cleared two other potential pitfalls to lenders who choose to reject the agency appointment: They no longer have to worry about the risk of the loan guarantee or that their overall fee from the SBA would somehow be reduced or compromised,” Hoover said. “This gives the lenders more ammunition to stand firm on their position that they will not honor all agent appointments that were given to them by their borrowers.”

Last week, a federal judge in Florida also sided with lenders in one of the smaller lawsuits filed over agent fees. In the case of Sport & Wheat, CPA versus a group of lenders, Judge T. Kent Wetherell II said agents are not entitled to a portion of lenders’ fees.

Wetherell said without an agreement in place, the SBA’s guidance on the topic “simply explains that if an agent is to be paid a fee, the fee must be paid by the lender from the fee it receives from the SBA.”

Hoover said prior to the ruling that absent help from Congress or the SBA, accountants and other agents hope for collaboration with lenders “that recognizes the value of the services provided in helping our mutual clients to quickly submit accurate PPP loan applications during a time of incredible need for professional assistance.”

Erik Asgeirsson, president and chief executive officer of CPA.com, said during a webinar he also hopes for a collaborative effort.

“It’s clearly not too late for banks to pay the firms these fees,” he said. “We know that the firms did a lot of great work back in April and May. We have been encouraging the banks to act in good faith and understand that at times, it was not always possible to get those engagement letters put in place and to review this with the firms and to do it in a good-faith fashion.”

McNamara said in the SBA’s typical 7(a) loan program – of which the PPP is an extension – agents and lenders sign a form agreeing to the agent’s role at the beginning of the transaction.

An article from *American Banker* [says](#) the dispute has been at the core of several dozen lawsuits filed across the U.S. since the PPP opened in early April. A tracker from law firm Jones Walker LLP shows agent fees as a source of PPP-related litigation in more than 10 states.

In one case, the plaintiffs argued \$3.85 billion in fees for agents is at stake. American Banker reports banks' lawyers say the number is inflated and uses a generous approach in its calculation.

The publication said in addition to smaller institutions, banks sued over agent fees include JPMorgan Chase, Citigroup, Bank of America, Wells Fargo, U.S. Bank, Truist Financial and PNC Financial Services Group.

Some banks have said they were unaware of agents' involvement in the loan applications they processed. Certain banks allegedly refused to pay the fees as a matter of policy.

In a joint letter dated July 31, the American Bankers Association and related state associations from across the country asked the SBA to weigh in on the debacle. They pointed to comments from Treasury Secretary Steven Mnuchin, who said during a Congressional hearing that previous guidance was based on the assumption of a contractual relationship.

In early August, the Independent Community Bankers of America likewise asked federal authorities to clarify the matter.

Two developments this month suggest agents who did not establish contractual relationships will face more obstacles to receive the fees they say they earned. First, in a set of answers to Frequently Asked Questions issued Aug. 11, the SBA said whether lenders pay agents a fee is not material to its guarantee of the loan or its payment of fees to the lender.