

Guidance for Broker-Dealers and Investment Advisers on the Paycheck Protection Program

What is the Paycheck Protection Program (PPP)?

The PPP is a U.S. Small Business Administration (SBA) loan designed to incentivize small businesses to keep their workers on the payroll during the Coronavirus (COVID-19) crisis.

The SBA advises that PPP loans will be eligible for forgiveness if the funds are used for payroll costs, interest on mortgages, rent, and utilities. Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Loan forgiveness could be reduced if full-time headcount declines, or if salaries and wages decrease.

Loan payments will be deferred for six months. No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees. This loan has a maturity of two years and an interest rate of 1%. However, licensees should closely read the terms of their loan agreements for details.

For more information about the PPP, please refer to the U.S Small Business Administration's [website](#).

What are the state reporting obligations for licensees who have received a PPP loan?

As stated in the Securities and Exchange Commission's [guidance](#) posted on April 27, 2020, fiduciaries under federal law must provide full and fair disclosure to clients of all material facts relating to the advisory relationship. Furthermore, California Code of Regulations (CCR) [section 260.238\(k\)](#) requires written disclosure of any material conflict of interest relating to providing advisory services that could be reasonably expected to impair the rendering of unbiased and objective advice. Consequently, if the circumstances leading a licensee to seek a PPP loan or other type of financial assistance constitute material facts relating to its advisory relationship with clients, the licensee should disclose, for example, the nature, amounts and effects of such assistance. If the licensee requires such assistance to pay the salaries of its employees who are primarily responsible for performing advisory functions, this fact should be disclosed to clients.

In addition, if a licensee is experiencing conditions that are reasonably likely to impair its ability to meet contractual commitments to its clients, the licensee should disclose this financial condition in response to Part 2A (Item 18 - Financial Information) of Form ADV (Firm Brochure), and/or as part of Part 2A, Appendix 1 (Item 9) of Form ADV (Wrap Fee Program Brochure) as applicable.

Note that a PPP loan will remain a balance sheet liability which in turn will affect the computation on the Minimum Financial Requirement Worksheet. Disclosures are required until the loan is forgiven or paid in full.

This document is for informational purposes only, and is not meant to implement, interpret, or make specific any existing laws or regulations.

Must PPP loan recipients maintain net capital requirements if they have discretion, custody, or collect prepayments of \$500 or more and six or more months in advance?

Yes, licensees are still subject to net capital requirements pursuant to CCR [section 260.237.2](#) if net worth falls below the 120% test or CCR [section 260.241.2](#) if net worth falls below the minimum.

If a registered person or a business they control obtains a PPP loan and the loan is partially or fully forgiven, will the registered person be required to report that forgiveness in response to Question 14K on their Form U4 as a “compromise with a creditor?”

No, provided the PPP loan, or part of the loan, is forgiven consistent with the original terms of the loan. For purposes of Form U4 Question 14K, a compromise with one or more creditors “generally involves an agreement between a borrower and a creditor in which a creditor agrees to accept less than the full amount owed in full satisfaction of an outstanding debt, unless such an agreement is included in the original terms of the loan.” Because a PPP loan contemplates forgiveness of some or all of the loan as part of the original terms of the loan, such forgiveness will not involve a new agreement by the creditor, but will be an event consistent with the loan’s original terms. In those circumstances, the forgiveness of a PPP loan will not be a “compromise with creditors” for purposes of Form U4 Question 14K. Any forgiveness beyond the original terms of the loan would be considered a “compromise with creditors.” (See [FINRA’s FAQ.](#))