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• • • • [Risk Alert] Loan and Debt Relief Application Assistance  
AICPA Member Insurance Programs <reply@email-cpai.com>  
Mon, Apr 13 at 9:50 AM



The confusion surrounding the introduction of the Paycheck Protection Program (“PPP”) and other loan options provided by the Coronavirus Aid, Relief, and Economic Security Act and other stimulus activities have small businesses turning to their CPAs for help, especially as it relates to assistance with loan applications.

This alert outlines risk mitigation activities to be undertaken by CPA firms related to this service. Note that additional guidance on this topic is being issued frequently, and the consultative advice herein may be subject to change.

#### *Client Acceptance*

Before accepting an engagement to assist a client in applying for a [funding program administered by the U.S. Small Business Association \(SBA\)](#), including PPP, CPAs should first consider whether the client is the right fit for the service and that they understand their responsibilities. The client should understand the application process and that they are responsible for providing timely, complete and accurate information to the firm to facilitate the completion and submission of any loan or other debt relief application. Clients should also understand that it is their responsibility to comply with any applicable loan forgiveness and repayment provisions.

An engagement related to evaluating loan options and/or providing assistance with the application is a consulting service subject to the AICPA Statement on Standards for Consulting Services. A fundamental part of any consulting engagement is the client’s acceptance of their responsibilities and involvement in the engagement. A client that prefers to shift all responsibilities to the CPA firm may not be appropriate for this service.

Consider the role expected of the CPA and how they will be compensated. While the PPP includes a provision for lenders to pay an Agent fee to CPAs or certain other professionals for completing and submitting loan applications for applicants, it does not specify whether in doing so, the CPA is serving as an agent of the client OR the lender. Therefore, if the CPA expects to be compensated as an agent in accordance with the PPP, the CPA should contact the lender to discuss payment expectations before agreeing to render the services.

Finally, before undertaking a loan application assistance engagement for an attest client, review [AICPA ethical guidance on this topic](#).

#### *Engagement Letters*

The AICPA Professional Liability Insurance Program provides a sample consulting

engagement letter and sample terms and conditions document which may be leveraged for loan application assistance engagements. Both are available to professional liability insurance policyholders in the [Policyholder Resource Center](#).

Important modifications to be made to the consulting engagement letter include:

- Engagement objectives and scope: Some engagements will be limited to assisting the client in gathering information necessary to complete and submit the online loan application. Others may include the provision of advice and recommendations related to the various loan or debt relief programs available to the client.
  - Clearly articulate the scope of services to be delivered, including the identification of the loan program, application or form and the lender.
  - If the CPA is not advising on other available SBA loan programs, clearly state this.
  - If services will not include monitoring and assistance in gathering information to help the client comply with applicable loan forgiveness and repayment provisions, clearly state this.
- Client responsibilities: List the client's responsibilities including, but not limited to:
  - Unless specifically included in the scope of services, selecting the loan or debt relief program for which the client is applying.
  - The provision of complete and accurate information to the CPA.
  - Reviewing the accuracy of required client information prior to submission of the loan or debt relief application.
  - Completing, signing and submitting any loan or debt relief application.
- CPA firm responsibilities: The CPA's responsibilities should be limited to only those services outlined in the engagement letter. Include a statement that the firm will not audit or verify any information provided by the client. Consider adding a statement that the firm does not provide any guarantee regarding whether the client will qualify for and obtain a loan, debt relief or loan forgiveness.
- Engagement deliverable: Clearly describe the engagement deliverable. The deliverable may be electronic or some other form of written communication. Use email or secure client portals to communicate electronically. Refrain from providing oral advice or consultations. If you must do so, send a follow-up email or other written communication to document what was discussed.
- Defense, indemnification and hold harmless language: Include a provision whereby the client agrees to hold the firm harmless in the event that a loan or debt relief application submitted in good faith is not approved, and to defend and indemnify the firm for any third party claims made against the firm.
- Disclosure of potential conflict of interest: As noted, under the PPP, a lender can pay a CPA acting as an agent a fee for assisting the client in preparing and submitting the loan application. This may be viewed as a potential conflict of

interest in accordance with the AICPA Code of Professional Conduct. If applicable, the payment of the fee and the client's written consent to and waiver of the potential conflict should be disclosed in the engagement letter.

- **Fees:** Clearly define the fee structure in the engagement letter. If the CPA firm is offering deferred payment terms to the client, describe them in detail.

If the firm will be acting as an agent and compensated by the lender, obtain a written agreement with the lender to secure payment of agent fees permitted by the PPP. Likewise, consider including a disclosure and waiver of a potential conflict of interest between the firm and the lender in light of the firm's existing relationship with the client. While an agreement with the lender may create privity of contract allowing the lender to pursue claims against the CPA, including a defense and indemnification provision in the engagement letter with the client can help mitigate this risk.

#### *Engagement Delivery – Documentation*

Be alert for any guidance issued by the SBA, the U.S. Department of the Treasury, the [AICPA](#) or others. The SBA released a [frequently asked questions document](#) on April 7, 2020 . If guidance regarding loan qualification and forgiveness calculations and other options is unavailable or unclear, explain the various options to the client, the benefits and risks of each option and direct the client to make the decision on how to treat the item. Document all discussions held with the client and decisions made by them.

If the CPA firm will be completing and submitting the loan application on behalf of the client, the CPA should retain documentation demonstrating the client's review, acceptance and approval of the information included in the loan application prior to submission. The client is responsible for signing the application, which contains their representations, authorizations and certifications in applying for the loan.

If providing advice regarding loan or debt relief programs is within the scope of the engagement, the CPA should articulate loan options available to the client and the pros and cons of each option, including: client eligibility, potential tax implications for the client, payment terms, restrictions on use of funds and loan forgiveness provisions. Remind the client that it is their responsibility to make decisions related to whether or not to apply for a loan, loan advance or other debt relief, and which program is best suited for them.



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The AICPA is taking the Coronavirus (COVID-19) very seriously. They are continually monitoring the virus' impact on our members, staff, exam candidates, students and the profession and have created an online resource center. [Visit the AICPA's Site to Learn More.](#)

### **AICPA Member Insurance Programs**

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