

Potential Pitfalls for PPP Lenders – Watch out for Compliance Risks

Financial Services

As small businesses struggle to stay afloat during these unprecedented times, the federal government has instituted the Paycheck Protection Program (“PPP”) to provide economic relief through guaranteed small business loans. Any lender who wishes to offer these loans are required to have anti-money laundering (“AML”) policies and procedures to comply with the Bank Secrecy Act (“BSA”).

The U.S. Small Business Administration (“SBA”) issued an interim final rule deploying the PPP, which provides \$349b in forgivable loans to assist small businesses as they struggle with negative impact of the COVID-19 pandemic.¹ The SBA’s interim final rule outlines the requirements for businesses that wish to apply for a PPP loan, as well as the financial institutions eligible to offer, underwrite, and service these loans. For financial institutions who otherwise qualify as PPP lenders, before doing so, they must have a reasonably designed BSA/AML program in place that covers those customers and the underlying transactions.

AML Program for PPP Loans

The PPP will allow both non-bank lenders and depository institutions to act as the servicer of loans, but it requires all lenders to have a reasonably-designed BSA/AML program in place to prevent fraud and abuse against the program. BSA/AML could be a new compliance obligation for many non-bank lenders. However, since the PPP loans are fully guaranteed by the SBA, it may be financially advantageous for certain lenders to voluntarily comply with the BSA. For federally insured depository institutions that already must comply, failure to consider and reasonably mitigate BSA/AML risk can result in negative downstream compliance implications.

Non-Bank Lenders

Under the SBA’s new rule, certain non-bank lenders may offer PPP loans only if they implement a reasonably designed BSA/AML compliance program. To create an equal playing field, the program must be commensurate with the requirements that cover other federally regulated financial institutions. Specific BSA/AML requirements can differ depending on the institution type in question. Depending on the non-bank lender type applying to offer PPP loans, these obligations will likely include, but are not limited to, a customer identification program (“CIP”), independent audit, customer due diligence (“CDD”), and suspicious activity reporting (“SAR”) monitoring and filing.

¹ https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf

Depository Institutions

For federally insured depository institutions currently covered by the full slate of BSA/AML rules, including banks and credit unions, the PPP may have significant impact on compliance burden. With a sudden increase in loan customers, there may be a rapid rise in due diligence reviews, an increase in surveillance alerts and investigations, as well as SAR filings on PPP illicit actors. Depository institutions that wish to offer PPP loans should first assess whether and how their AML departments can manage the influx of customers and activity. Failure to do so may result in increased regulatory scrutiny and possible enforcement actions.



How Can FTI Consulting Help?

FTI Consulting's BSA/AML professionals are former regulators, prosecutors, law enforcement officials, bank compliance executives, auditors, and data specialists. As financial institutions continue to face an evolving compliance landscape, we offer end-to-end BSA/AML solutions, including, but not limited to:

- Compliance program development, assessment, and remediation;
- Implementation of CIP/KYC/CDD/EDD best practices and key client, account, correspondent and counterparty due diligence;
- Independent audit of the BSA/AML compliance program in place, as required by regulation;
- Transaction monitoring design, analytics, and validation;
- Forensic investigations and post-transaction analyses;
- Cybersecurity and technology; and
- Enforcement advisory.

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