

# CARES Act Paycheck Protection Program Requirements

## FINRA Issues Guidance on PPP Loan Forgiveness Form U4 Question 14K “Compromise with Creditor” Disclosure Requirements

On April 13, 2020, the Financial Industry Regulatory Authority (FINRA) issued guidance for member firms and registered persons regarding the Paycheck Protection Program (PPP) created under Section 1102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. FINRA specifically addressed the interaction between PPP loan forgiveness and disclosure obligations under Question 14K on Form U4. FINRA has determined that forgiveness under an approved PPP loan does not trigger disclosure obligations in response to Question 14K as a “compromise with creditors,” so long as the forgiveness is “consistent with the original terms of the loan.” FINRA’s full statement, released in FAQ format, provides:

**Q: The Paycheck Protection Program (PPP) allows eligible individuals and small businesses to obtain loans that can be used during the COVID-19 crisis. A PPP loan is eligible for forgiveness, provided the terms of the loan forgiveness are satisfied. If a registered person or a business they control obtains a PPP loan and the loan or part of the loan is 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?”**

**A:** 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.”

This guidance sheds much-needed light on the uncertainty surrounding Question 14K, but also demonstrates the importance of registered persons taking precautionary measures to avoid potential disclosure obligations. All registered persons seeking and receiving a PPP loan should create and maintain clear documentation demonstrating the purpose of the loan and the use of loan proceeds necessary to obtain forgiveness under the PPP loan program. Failure to keep detailed records may jeopardize forgiveness under the PPP loan program and the exemption provided by FINRA from disclosure reporting otherwise required under Question 14K. Registered persons should consult with their compliance counsel as to their particular circumstances.

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