

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 37 No. 1 January 2021

PPP AGENT FEE AND APPLICANT LITIGATION: AN UPDATE

The rushed roll out of the PPP and the size of the program have led to litigation across the country, mainly in two categories: agents seeking fees for assisting businesses that applied for PPP loans and unsuccessful applicants for loans. The authors review this litigation, describing the claims made by plaintiffs and the negative district court responses in the two cases that have been decided so far.

By Amy Pritchard Williams, Callan G. Stein and Lauren H. Geiser *

In response to the quickly deteriorating economic conditions caused by the COVID-19 pandemic, Congress expanded the Small Business Administration's 7(a) Loan Program by creating the Paycheck Protection Program ("PPP") and authorized the SBA to guarantee 100 percent of the PPP loans made by approved lenders to qualifying businesses. Authorized pursuant to the March 27 Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), loans under the PPP program became available just a week after the CARES Act became law. The SBA released four pages of general guidance on March 31 and an Interim Final Rule ("IFR") governing the program on April 2, the night before applications opened.

Businesses scrambled to apply for the \$349 billion in initial funding, which ran out in just 13 days. Problems with the program's roll out were well publicized: the CARES Act did not provide for any exceptions to the Patriot Act's Know Your Customer ("KYC") requirements, which led many lenders to restrict applications to existing customers; the SBA's application approval system was quickly overwhelmed by the crush of applications; and potential applicants

were confused by the program's rules on loan forgiveness and repayment. The speed with which the program was rolled out meant that the interim rules and other regulatory guidance from the SBA left many questions unanswered.

The Interim Final Rule ("IFR"), first released on April 2, was published in the Federal Register on an expedited basis on April 15, 2020.¹ On April 24, 2020, Congress made an additional \$310 billion in funding available, and over the next few months the SBA issued additional and revised rules and guidance for the program.² When the program closed on August 8, 2020, \$525 billion in loans had been approved and roughly \$124 billion in funding remained untapped.

¹ Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20,811 (Apr. 15, 2020).

² The SBA's PPP rules and guidance can be accessed at its website. <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-9>.

*AMY PRITCHARD WILLIAMS and CALLAN G. STEIN are partners at Troutman Pepper Hamilton Sanders LLP. LAUREN H. GEISER is an associate at the firm. Their e-mail addresses are amy.williams@troutman.com, callan.stein@troutman.com, and lauren.geiser@troutman.com.

The Review of Banking & Financial Services

Now in its 32nd year of publication, *The Review of Banking & Financial Services* is published monthly, 12 issues a year.

As securities, commodities, and banking law have become increasingly complex, The Reviews have become ever more valuable to lawyers in these fields. News of developments, available from many sources, is one thing, but only in-depth analysis will put those developments in perspective and keep a practitioner from being blind-sided by some aspect of the subject that is not news. A half-hour spent consulting a Review article is likely to be the most efficient and economical way of penetrating a new subject or simply keeping up with an old one.

Each Review issue consists of one or two articles on banking law written by outstanding practitioners in the field.

The Reviews are unique in being published frequently enough to be current and being written by practitioners for practitioners. The articles are up-to-date, concise, and practical. With their broad range of authors from major firms, The Reviews provide a unique window into professional thinking on a host of subjects and problems that confront practicing financial services and banking lawyers. For practice in these areas, they are a must-have resource.

To begin a subscription, mail or fax the order form below, call our subscriber services at 1-609-683-4450, or order using our [online shopping cart](#).

Use the order form below to subscribe today ... and get 2 additional months of service free.

Mail to: RSCR Publications LLC, PO Box 585 Kingston NJ 08528 or Fax completed form to 609-683-7291

<input type="checkbox"/> YES. Please enter my subscription to <i>The Review of Banking & Financial Services</i> for 14 months of service for \$685.00	Please Print
Choose format: <input type="checkbox"/> Print <input type="checkbox"/> Digital (PDF via email)	Name
Charge my <input type="checkbox"/> Amex <input type="checkbox"/> Mastercard <input type="checkbox"/> Visa	Firm
Card Number Expire	Postal Address
Signature	City/State/Zip
<input type="checkbox"/> Check enclosed (payable to RSCR Publications LLC)	Email and Phone