



Presented in participation with:  
Ethan W. Smith, Esq.

## **EQUITY INJECTION ISSUES**

**For technical assistance, call AT&T  
Helpdesk at 888-796-6118  
Thank you!**

**SBA West Virginia District Office  
Tuesday, August 23, 2016  
11:00 a.m. EST**



Presented By: Ethan W. Smith, Esq.

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We would like to thank Ethan Smith for his time and providing information regarding his experience in lending and working on SBA loans from his perspective.

All opinions, conclusions, and/or recommendations expressed herein are those of the presenter and do not necessarily reflect the views of the SBA.



# Presenter

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## **Ethan W. Smith**

Partner, Starfield & Smith, PC

Ethan W. Smith's areas of practice focus on government guaranteed lending, commercial lending, banking, real estate and commercial law. Ethan has closed thousands of government guaranteed loans nationwide.

*Starfield & Smith, P.C. is a boutique law firm specializing in all aspects of commercial lending, from origination through liquidation, for lenders nationwide. Starfield & Smith closes over \$150 million of commercial loans for its lender clients every quarter. For more information about Starfield & Smith, visit [www.starfieldsmith.com](http://www.starfieldsmith.com)*

# Agenda:

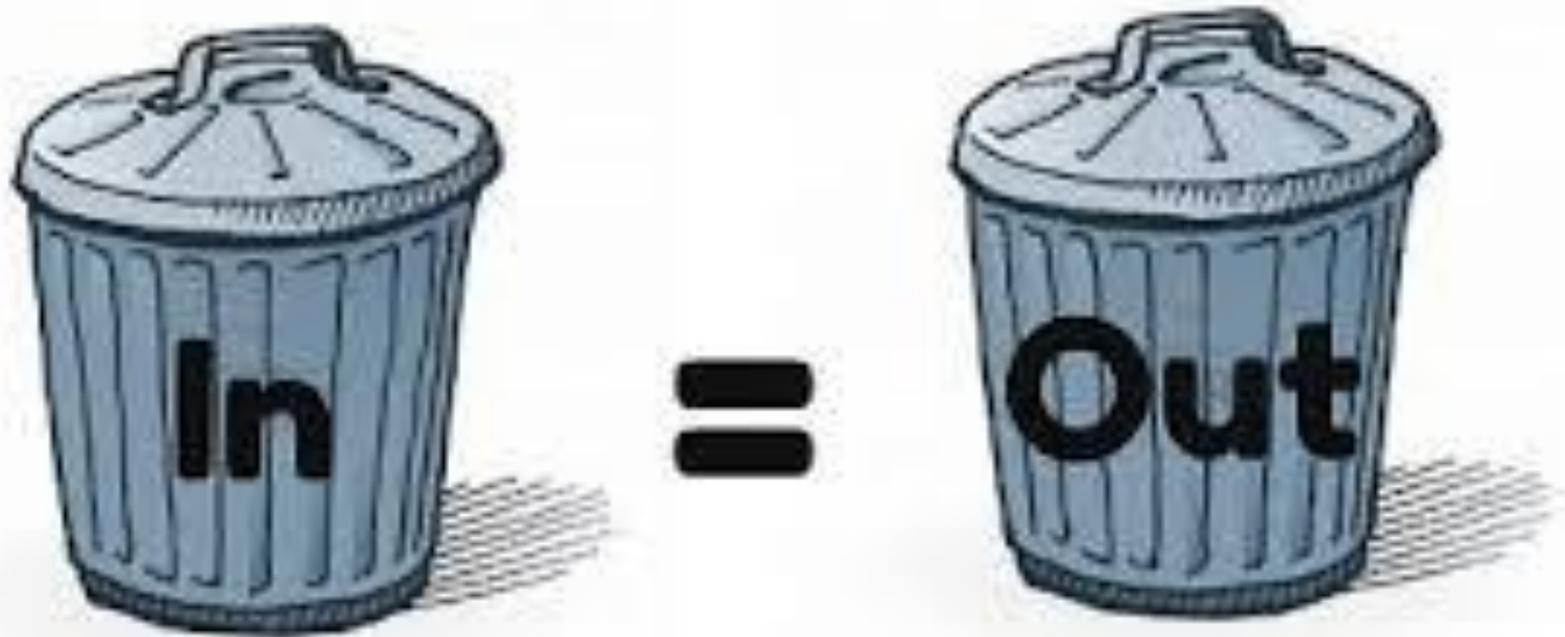
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- ❑ Equity Injection
- ❑ SBA Requirements
- ❑ Purpose
- ❑ Types
- ❑ Documentation Requirements
- ❑ Common Issues/Pitfalls



# Guiding Principle

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# EQUITY INJECTION: SBA REQUIREMENTS

# SBA REQUIREMENTS

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## □ Loans under \$350k

- Follow lender policy for similarly sized non-SBA loans

## □ Loans over \$350k

- Same as it ever was...
- Detailed discussion of amount of required equity and its adequacy (industry, experience, competition, etc.)
- SBA expects equity injection. **WHY?**

**SAME AS IT EVER WAS  
SAME AS IT EVER WAS  
SAME AS IT EVER WAS**



# EQUITY INJECTION: PURPOSE

# PURPOSE

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- “ensure long-term survival of the business”
- Skin in the game

**Skin in the Game**  
(skin : ən 'θi : 'ɡeɪm)

to have a personal stake  
in a desired outcome



## **EQUITY INJECTION: TYPES**

# TYPES

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## □ Cash

- “Money talks”

## □ Borrowed Cash

- Outside source of repayment
- Disclosure to SBA – GP if same Lender

## □ Assets

- Independent valuation

## □ Standby Debt

- No payments for the term of the loan





# **EQUITY INJECTION: DOCUMENTATION REQUIREMENTS**

# DOCUMENTATION REQUIREMENTS

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## □ 2 concepts:

### ■ Existence

□ “Did the money actually go into/for the benefit of the business?”

### ■ Source

□ Where did the money come from?

## □ Why do we care?

■ High rates of fraud -- that’s why!



# DOCUMENTATION REQUIREMENTS

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## □ Documentation:

- Verify prior to loan disbursement
- Check/wire w/ accompanying bank statement showing \$ moved to borrower's account
- 2 most recent months' statements for the account the funds were drawn from
- Escrow statement showing use of the cash
- Gift Letters/Financial Statements/Promissory Notes are insufficient absent bank statements, cancelled checks, etc.

□ Failure to properly document  
= guaranty denial!

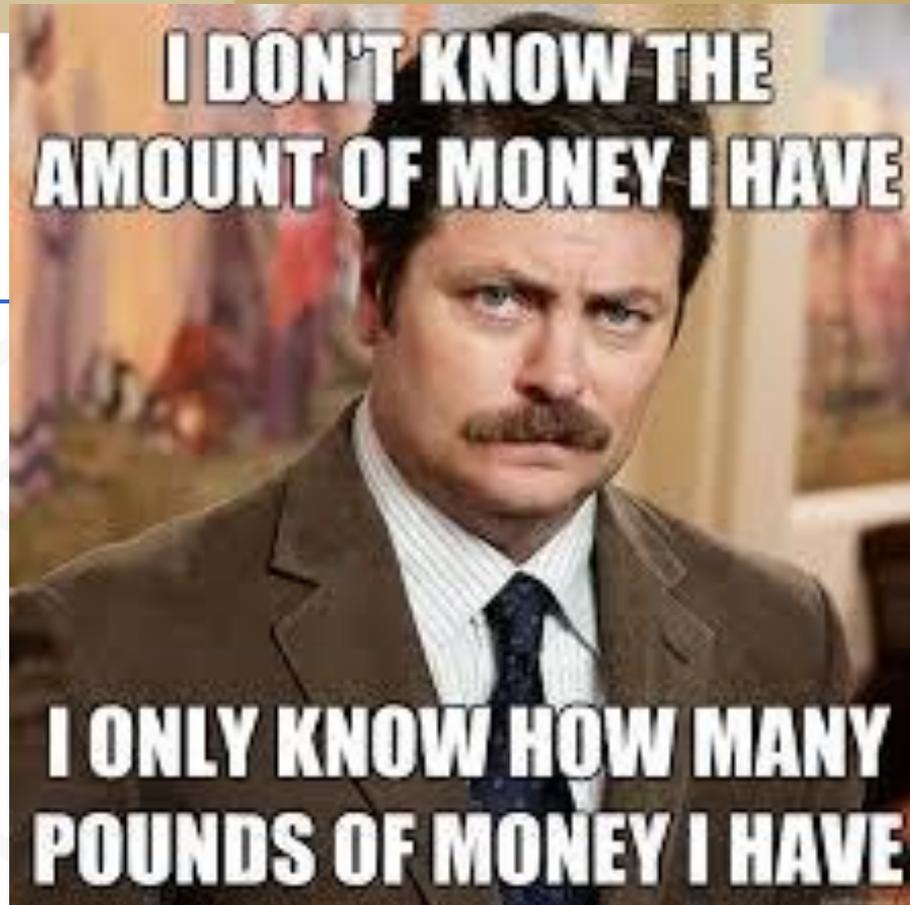


# DOCUMENTATION REQUIREMENTS

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- ❑ Ineligible “equity”
  - Value/cost of education
  - Borrowed funds that don’t qualify for exception
  
- ❑ Gifts
  - Is it *really* a gift?!?
  
- ❑ Standby Debt
  - Note
  - Interest only?
  - PLP Confusion





## EQUITY INJECTION: COMMON ISSUES/PITFALLS

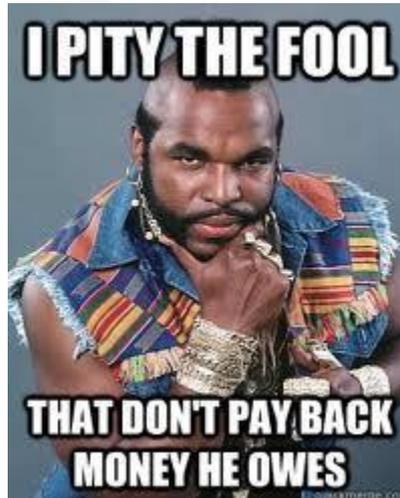
# COMMON ISSUES/PITFALLS

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☐ Affiliates



☐ Notes Payable



# COMMON ISSUES/PITFALLS

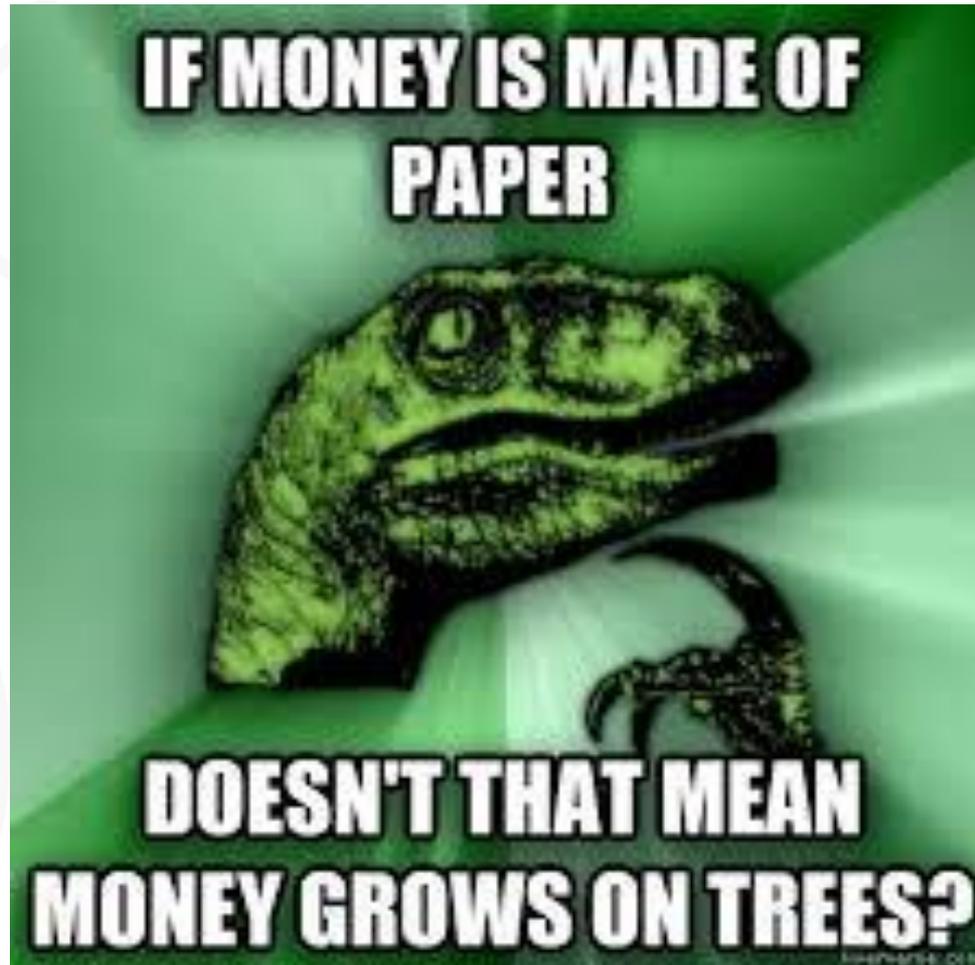
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- ❑ “Borrowed” Funds
- ❑ “Gifted” Funds
- ❑ “CASH”!!!
- ❑ Failure to verify equity is in before loan proceeds disbursed
- ❑ Agents



# Questions

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Thanks!

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