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**Huddle: COVID-19 Banking Edition C/A Top 10 FAQs May 13, 2020**

**PPP Questions**

**Q1: Can you provide a breakdown of the CFPB Compliance Aid guidance for ECOA Notification Obligations with PPP loans?**

**A1:** The Bureau released its “Equal Credit Opportunity Act and Regulation B FAQs Related to the COVID-19 Emergency” (found here: <https://files.consumerfinance.gov/f/documents/cfpb_ecoa-regulation-b_faqs-covid-19.pdf>) answering questions specific to the PPP and notification of action taken requirements. Per Regulation B, creditors are required to notify an applicant of action taken within 30 days after receiving a “completed application.” This notification concerns the creditor’s approval of, counteroffer to, or adverse action on the application. This 30-day requirement applies to a credit applicant that is a business that had gross revenues of $1 million or les in its preceding fiscal year. If a credit applicant is a business that had gross revenues in excess of $1 million in its preceding fiscal year, the creditor must notify the applicant of the action taken within a reasonable period of time (See generally 12 CFR 1002.9(a)(3)(ii)). With the volume of applications, best practice procedurally would be to treat all applicants the same as comply with the under $1 million, 30-day requirement.

With that being said, the CFPB stated that a PPP application is not a “completed application” under Regulation B until the creditor receives a loan number from the SBA or a response about the availability of funds. Per Regulation B, an application is completed when “a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested….” (See 12 CFR 1002.2(f); comment 9(a)(1)-1). This includes “any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure or provide security for the credit or collateral.” (See 12 CFR 1002.2(f)). Creditors may have delegated authority to approve a loan, but the SBA must be the one to issue a loan number in order for the PPP loan to be guaranteed by the SBA. Once a creditor has submitted a PPP loan application, the 30-day timeline to notify the applicant of action taken on a completed application does not begin until the creditor receives a loan number from the SBA or that response about availability of funds.

This need for an SBA loan number to make a completed application does not alleviate a creditor from complying with the overall requirements of Regulation B however. Creditors must provide an adverse action notice within 30-days after taking an adverse action on a PPP application—so if that application was missing information but it provided sufficient data for a credit decision, the bank may evaluate the application, make its credit decision and notify the applicant accordingly. If denied, specific reasons for the credit denial (or the notice of the right to receive the reasons) must be given.

It is also important to note the requirement regarding incomplete applications. Under Regulation B, an application can be denied for incompleteness only if the application is incomplete regarding information that the applicant can provide and the creditor lacks sufficient data for a credit decision. Or, if an application is incomplete regarding matters that an applicant can complete, the bank has the option to provide a notice of incompleteness per 1002.9(c)(1)(ii). If the creditor has not received a loan number or response on availability of funds from the SBA, *but* the PPP application is otherwise complete, the bank cannot deny the application based on incompleteness or provide a notice of incompleteness because an SBA loan number or response on availability is *not* something the applicant can provide the creditor.

**Q2: Is there any additional guidance on loan forgiveness?**

**A2:** As of this publication, apart from what prior C/A FAQs have discussed, there is no other additional official guidance on the loan forgiveness application process from the SBA or Treasury.

Several national organizations, including the American Bankers Association, have urged the Treasury Department and SBA to issue as soon as possible “clear, bright-line guidance” on how the PPP loans will be forgiven.

**Q3: What are our requirements with the Form 1502 for the Program?**

**A3:** The latest final rule has bumped back the requirement on Form 1502:

"Specifically, Part III.1.b. provides that Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved or, for loans approved before the availability of the updated SBA Form 1502 reporting process, by May 18, 2020. Because of the extension of the safe harbor deadline, SBA is extending the deadline for the submission of the initial SBA Form 1502 from May 18, 2020 to May 22, 2020."

Resource: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Extension-of-Limited-Safe-Harbor-with-Respect-to-Certification-Concerning-Need-for-PPP-Loan-Request.pdf>

So now the deadline for this is May 22, 2020. At this time, no specific SBA Form 1502 has been provided nor has any additional information regarding the reporting process for PPP lenders on how to report on PPP loans and be able to also collect on the processing fee, other than the guidance issued above and here as well:

"By when must a lender electronically submit an SBA Form 1502 indicating that PPP loan funds have been disbursed?

SBA will make available a specific SBA Form 1502 reporting process through which PPP lenders will report on PPP loans and collect the processing fee on fully disbursed loans to which they are entitled. Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved or, for loans approved before availability of the updated SBA Form 1502 reporting process, by May 18, 2020. The lender must report on SBA Form 1502 whether it has fully disbursed PPP loan proceeds. A lender will not receive a processing fee: (1) prior to full disbursement of the PPP loan; (2) if the PPP loan is cancelled before disbursement; or (3) if the PPP loan is cancelled or voluntarily terminated and repaid after disbursement (including if a borrower repays the PPP loan proceeds to conform to the borrower’s certification regarding the necessity of the PPP loan request). In addition to providing ACH credit information to direct 7 payment of the requested processing fee, lenders will be required to confirm that all PPP loans for which the lender is requesting a processing fee have been fully disbursed on the disbursement dates and in the loan amounts reported. A lender must report through either Etran Servicing or the SBA Form 1502 report any PPP loans that have been cancelled before disbursement or that have been cancelled or voluntarily terminated and repaid after disbursement. The Administrator, in consultation with the Secretary, determined that requiring lenders to report on disbursement within 20 calendar days of loan approval ensures that disbursement of funds to eligible borrowers will occur more rapidly. This requirement also will enhance SBA’s ability to track program data."

Resource: Page 6 <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Disbursements.pdf>

Update: As of May 13th, Colson Services Corp. issued the following memo in relation to SBA Form 1502 and reporting, which states the following:

### **CARES ACT - Section 1102 Paycheck Protection Program (PPP)**

**1502 Dashboard Enrollment for Paycheck Protection Program Lenders**

The 1502 Dashboard (Dashboard) is available through the Sign In drop-down menu available on the upper right hand corner of this homepage.

**PPP Lender** users who do not already have a Dashboard account with the FTA can enroll by sending an email to [Enrollment@colsonservices.com](mailto:Enrollment@colsonservices.com) that contains the following:

* Name of Institution;
* At least two of the following:

1. E-Tran Main Location ID (CAFS Location ID under which loans were originated);
2. One SBA PPP GP loan number assigned to a loan made by Lender; and
3. Colson Lender ID (if known);

* Individual user contact information (include in the body of the e-mail, separate from signature block):

1. Name;
2. Email address; and
3. Phone number.

PPP Lenders should not request access to the separate 1502 Connection (Connection).  The Connection cannot be used for PPP loans.

**Lender Service Providers (LSPs)** users providing services for PPP Lenders under a reviewed LSP agreement who do not already have a Dashboard account with the FTA can enroll by sending an email to Enrollment@colsonservices.com that contains the following:

* Name of LSP;
* LSP CAFS Partner ID;
* Individual user contact information (include in the body of the e-mail, separate from signature block):

1. Name;
2. Email address; and
3. Phone number;

For each bank partner, provide the information below:

* Bank partner’s information:

1. Bank name;
2. E-Tran Main Location ID
3. One SBA PPP GP loan number assigned to a loan made by a bank partner;
4. Colson Lender ID (if known);

* Bank Partner’s Authorizing Official

1. Name;
2. Email address; and
3. Phone number.

Upon receipt of a complete enrollment email, the FTA will send login credentials consisting of a 1502 Dashboard User ID and Access Code. The User ID and Access Code will be sent in separate e-mails.

**Due to the extremely high demand for PPP loans, please allow sufficient time for processing.  SBA will be publishing additional guidance on next steps following enrollment.  Please hold questions and continue to monitor the FTA Newsroom through the News Menu for updates as they become available.**

**Resource:** <https://colsonservices.bnymellon.com/>

**Q4: How are self-employed individuals supposed to be documenting payroll to themselves for forgiveness purposes?**

**A4:** Self-employed individuals (sole proprietors and independent contractors) have different considerations when it comes to PPP forgiveness responsibilities. Generally, PPP loan amounts are based on the average payroll expense but payroll for self-employed may not be applicable. Their loans were most likely based on 2019 net profit divided by 12, getting an average net profit (multiplied by 2.5 for PPP loan amount). Self-employed individual will need to prove expenses on utilities, rent and mortgage interest. If owner compensation replacement is applicable, they will also need to provide their 2019 Schedule C in order to claim the 8-weeks of net profits for forgiveness. It is just important to note that the entire PPP loan amount cannot be used as income replacement—if no other eligible expenses can be paid by the PPP funds, the remaining balance will most likely need to be repaid according to the PPP loan terms with the lender. Borrowers and financial institutions should always be discussing accounting definitions and practices, as well as tax questions with a tax professional.

**Q5: How are businesses supposed to handle not being able to meet the 75% threshold within the 8-week period in attempts to not lower their loan forgiveness amount?**

**A5:** Unfortunately, SBA guidance on this is silent and during recent calls with the Houston District SBA Office, it has been stated that the SBA will not be telling business owners how to run their business—meaning, ultimately it is up to the borrower to decide how to proceed. Some businesses are using bonuses to assist in making that 75% threshold, but this is not something banks need to be advising on, nor as official acceptance of this method between expressed in an Interim Final Rule or FAQ by the SBA or Treasury. Business borrowers need to be referring to their tax advisor on how to proceed. This is also true for headcount reduction—the SBA is relying solely on businesses to determine how to staff accordingly to meet maximum forgiveness and is not offering any operational advice.

**Q6: How are banks required to handle loans returned or repaid in full? Will this be reported on Form 1502?**

**A6:** At this time, this form is to be completed monthly by lenders participating in the PPP program in order to collect payment and loan information. Completed forms are to be submitted to the SBA’s 7(a) Fiscal and Transfer Agent, Colson Services Corp.

Apart from that information and the extension on timing requirements, not much other guidance has been issued on proper accounting for PPP loans. SBA Form 1502 reports PPP disbursements and fees due to the lender per the CARES Act. In order for a lender to receive its processing fee, the PPP loan must be fully disbursed, must not be cancelled before disbursement, and must not be voluntarily cancelled and repaid after disbursement.

It is important to note that the following are in reference to SBA 7(a) loans solely. SBA Form 1502 and Instructions can be found here: <https://www.sba.gov/document/sba-form-1502-sba-form-1502-instructions>. Colson Services Corp. also has their own FAQ here: <https://colsonservices.bnymellon.com/_locale-assets/pdf/sba-form-1502-frequently-asked-questions-(faqs)-03-07-2016.pdf>.

**Q7: Has there been any additional guidance on servicing of PPP loans?**

**A7:** At this time, no additional guidance has been issued about servicing of a PPP loan after the deferment period and if any remaining funds are not forgiven. It is important to note that there is rustlings that the PPP rules may be changing, but this does not change a borrower’s responsibility in tracking every dollar spent from the PPP loan proceeds.

**Miscellaneous Questions:**

**Q8: Do banks need to mention COVID-19 in the CRA Public File?**

**A8:** Regulators at this time have not issued any expressed requirement to include information about COVID-19 in the Public File. However, the bank is responsible for maintaining its Public File and making sure it is updated as of April 1 of each year. This can include information from COVID-19, including but not limited to:

* Written comments from the public about how the bank is helping meet its community’s credit needs with the bank’s responses;
* A list of the bank’s current branches with street addresses and geographic areas served, including information for any branches the bank has opened or closed during the current year;
* A list of services—including hours of operation, available loan and deposit products, and fees—offered at the bank’s branches, noting any significant difference in services by particular branches;
* For banks other than small banks, information about the bank’s consumer loans or any affiliates’ consumer loans for the previous two years; and/or
* A copy of the bank’s strategic plan if the bank is evaluated by one.

See generally: <https://www.ecfr.gov/cgi-bin/text-idx?SID=5ec3d03f1c751f710ebcc03de97dde5a&mc=true&node=pt12.3.228&rgn=div5#se12.3.228_143>

**Q9: Should banks be reporting COVID as a disaster even though not required by CDIA for credit reporting purposes?**

**A9:** For Compliance Alliance members, there is a summary of the various considerations, including CDIA’s, which would serve as a good reference: <https://compliancealliance.com/find-a-tool/tool/covid-19-credit-reporting-summary>. With that being said, CDIA also has issued an informative memo here: <https://cdia-news.s3.amazonaws.com/CDIA+Disaster+Notice_3-9-2020.pdf>.

Ultimately, if an account was current prior to a COVID-forbearance, the bank would continue to report it as current. The bank may additionally report AW or CP if it chooses, but C/A’s understanding is that this will not affect the credit report and would only provide additional insight as to the valid reason for the deferment.

For reference:

“(ii) REPORTING.—Except as provided in clause (iii), if a furnisher makes an accommodation with respect to 1 or more payments on a credit obligation or account of a consumer, and the consumer makes the payments or is not required to make 1 or more payments pursuant to the accommodation, the furnisher shall—

“(I) report the credit obligation or account as current; or

“(II) if the credit obligation or account was delinquent before the accommodation—  
“(aa) maintain the delinquent status during the period in which the accommodation is in effect; and  
“(bb) if the consumer brings the credit obligation or account current during the period described in item (aa), report the credit obligation or account as current.  
“(iii) EXCEPTION.—Clause (ii) shall not apply with respect to a credit obligation or account of a consumer that has been charged-off.”

Source:<https://www.congress.gov/bill/116thcongress/housebill/748/text#H1274B87B2B204ACA95F8C0D8228925C2>

If I report using the recommended FAQ 58 or FAQ 45 guidance and report Special Comment AW or CP, how will the consumers' credit scores be affected?

The country's leading score developers, VantageScore and FICO note that forbearance and deferred payment scenarios have a neutral impact on a consumer's credit score so consumers in one of these programs, as reported to the nationwide credit bureaus, should have no negative impact as a result of Coronavirus. FICO noted that "the placement and reporting of an account in forbearance or a deferred payment plan in and of itself does not negatively impact a FICO(r) Score." VantageScore makes clear that "[a] loan placed in a deferred payment or forbearance plan will not result in a negative impact." The same is true for a natural disaster coding: "[t]he net impact is that a consumer's VantageScore credit score will not go down, either because negative information is neutralized because of the natural disaster..."

Source: Page 13 <https://cdia-events.s3.amazonaws.com/teleseminars-webinars/handouts/Credit+Reporting+for+Consumer's+Affected+by+Natural+or+Declared+Disasters.pdf>

**Q10: When should banks start reopening lobbies and how should this be done?**

**A10:** Banks have continued to operate as an essential business during the COVID-19 pandemic. Many branches’ access was limited and more online or telephone banking was encouraged. Changes to stay-at-home orders are either happening or will be in your respective areas. Banks need to be proactive and start thinking now how to prepare reopening of branches or expanding of operations. Special considerations must be given to creating a safe environment once branch employees and customers return to brick-and-mortar locations. Banks need to be following any federal, state and/or county/local guidance when it comes to reopening phases and requirements. Additionally, banks should be considering the following:

1. What is the physical impact going to entail when reopening branches or expanding branch services?
2. How are banks going to accommodate branch employees returning to work?
3. How are banks going to keep not only the workspace safe for branch employees but also customers?
4. What processes will the bank take in remaining current with applicable guidance?
5. What types of communications will be necessary for employees and customers?
6. What types of reevaluations should the bank perform of prior workplace safety issues and employee and customer requests for accommodations in like of reopening under a post-COVID-19 environment?

Compliance Alliance will be hosting “Banking in a COVID-19 World: A Guide for Reopening Financial Institutions” webinar Monday, May 18th at 2:30 CST for both members and non-members nationwide. Registration can be found here: <https://compliancealliance.com/news-events/event/public-webinar-a-guide-for-reopening-financial-institutions>