

Practice Update

CFPB Issues Guidance on ECOA and SBA PPP Loan Applications

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On May 6, 2020, the Consumer Financial Protection Bureau (CFPB) issued [FAQs](#) clarifying Regulation B's application to the Small Business Administration's (SBA) Paycheck Protection Program (PPP). Under Regulation B, which implements the Equal Credit Opportunity Act, a creditor is required to notify loan applicants of actions taken concerning the creditor's approval of, counteroffer to, or adverse action on the application. 12 C.F.R. § 1002.9(a).

For a business that grossed \$1 million or less in its prior fiscal year, this notice must be delivered within 30 days. 12 C.F.R. § 1002.9(a)(3)(i), (a)(1). For a larger business, the creditor must provide notice within a reasonable period of time. 12 C.F.R. § 1002.9(a)(3)(ii). The CFPB's FAQs explain how to comply with the notification requirement given SBA's role in approving PPP loan applications and the potential for delays while SBA is processing an application.

The FAQs provide the following guidance:

- A PPP application that a creditor has submitted to the SBA 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. The CFPB bases this guidance on Regulation B's definition of "completed application," which includes any

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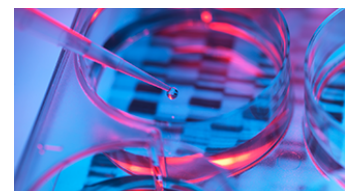
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approvals by governmental agencies necessary to guarantee the credit. 12 C.F.R. § 1002.9(a).

- If a creditor receives a PPP application, but decides against granting credit and does not submit the application to the SBA for consideration, the creditor must provide an adverse action notice within 30 days of its decision on that application.
- If a creditor submits a PPP application to SBA but does not receive a response, the creditor cannot deny the application for incompleteness. Under Regulation B, an application can be denied as incomplete only when it is incomplete because the applicant failed to provide required information. Regulation B comment 9(a)(1)-3. SBA's failure to respond to an application is not a failure of the applicant to provide necessary information.

The CFPB also encouraged lenders participating in the PPP program to review the SBA's webpage with more information about the program, available [here](#).

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