



The Bureau's Equal Credit Opportunity Act and Regulation B FAQs related to the COVID-19 Emergency

This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the Bureau's approach to Compliance Aids.

SBA Paycheck Protection Program and Notification of Action Taken

QUESTION 1:

Under the Equal Credit Opportunity Act (ECOA) and its implementing Regulation B, creditors are required to notify an applicant of action taken within 30 days¹ after receiving a “completed application” concerning the creditor's approval of, counteroffer to, or adverse action on the application.²

¹ This 30-day requirement applies to a credit applicant that is a business that had gross revenues of \$1 million or less 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, a creditor must notify the applicant of the action taken within a reasonable period of time. 12 CFR 1002.9(a)(3)(ii). For such businesses, notification within 30 days will count as reasonable in all instances. Comment 9(a)(3)-5. Moreover, this clarification regarding what constitutes a completed PPP application under Regulation B generally applies to all applicants, regardless of gross revenue.

² 12 CFR 1002.9(a)(1).

For an SBA Paycheck Protection Program (PPP) loan application received by the creditor and submitted to the SBA, is the application deemed “completed” before the creditor has received a loan number from the SBA or a response about the availability of funds, thereby requiring the creditor to provide a notice of action taken within 30 days?

ANSWER (UPDATED 5/6/2020):

No, a PPP application that the creditor has submitted to the SBA for loan processing is not a “completed application” under Regulation B until a creditor receives a loan number from the SBA or a response about the availability of funds. Under 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”³ This information includes, but is not limited to, “any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral.”⁴ Under the SBA PPP, creditors have delegated authority to approve a loan but the SBA must issue a loan number for a PPP loan to be guaranteed by the SBA.⁵ Therefore, where the creditor has submitted to the SBA a PPP loan application, the 30-day timeline to notify the applicant of the action taken on a completed application under Regulation B does not begin until a creditor has received a loan number from the SBA or a response about the availability of

³ 12 CFR 1002.2(f); comment 9(a)(1)-1.

⁴ 12 CFR 1002.2(f).

⁵ See PPP Interim Final Rule, 85 FR 20811 (April 15, 2020) (SBA is authorized to guarantee loans made under the PPP), available at, https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule_0.pdf; SBA PPP Loans Frequently Asked Questions, at Question 21 and n.6 (April 29, 2020) (noting that a lender may issue a PPP loan if it completes the process of submitting a loan through the E-Tran system and receives a loan number), available at, https://www.sba.gov/sites/default/files/2020-04/Paycheck-Protection-Program-Frequently-Asked-Questions_04%2029%2020_2.pdf.

funds. A creditor must act with reasonable diligence to collect information needed to complete an application.⁶

QUESTION 2:

If a creditor receives an SBA Paycheck Protection Program (PPP) loan application and “refus[es] to grant”⁷ the credit request without ever submitting the PPP loan to the SBA, does the creditor need to provide a Regulation B adverse action notification?

ANSWER (UPDATED 5/6/2020):

Yes, under Regulation B a creditor must provide an adverse action notification within 30 days after taking adverse action on a PPP application. If an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application, make its credit decision, and notify the applicant accordingly.⁸ If the credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons).⁹

QUESTION 3:

If a creditor has gathered sufficient data from the SBA Paycheck Protection Program (PPP) loan applicant for a credit decision, but has not received a

⁶ See 12 CFR 1002.2(f); comment 2(f)-6.

⁷ 12 CFR 1002.2(c)(1)(i).

⁸ Comment 9(a)(1)-4.

⁹ *Id.*

loan number from the SBA or a response about the availability of funds, can the creditor deny the application based on incompleteness?

ANSWER (UPDATED 5/6/2020):

No, under Regulation B an application may be denied for incompleteness only if an application is incomplete regarding information that *the applicant* can provide and the creditor lacks sufficient data for a credit decision.¹⁰ Alternatively, if an application is incomplete regarding matters that an applicant can complete, a creditor has the option of providing a notice of incompleteness under section 1002.9(c)(1)(ii). If the creditor has not received a loan number or a response about the availability of funds from the SBA, but the PPP application is otherwise complete, the creditor cannot deny the application based on incompleteness or provide a notice of incompleteness because a loan number or response from the SBA is not information that an applicant can provide to the creditor.

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The PPP is a program made available by the SBA, and the SBA is responsible for providing guidance and information about the requirements for the program. For more information about the PPP, we encourage creditors to visit the SBA's website for more information:

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>.

¹⁰ Comment 9(a)(1)-3.