Deloitte.

CENTER for
REGULATORY
STRATEGY
AMERICAS

CARES Act Paycheck Protection Program: anti-money laundering considerations (as of 4/29/2020)

In the rush to get stimulus relief to small business owners and employees, the Small Business Administration's (SBA) Paycheck Protection Program (PPP) created challenges, some unforeseen, for the government, financial institutions, and borrowers. To provide some clarity to the unforeseen challenges, shortly after Congress signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act[1] into law, the US Department of the Treasury, SBA, and Financial Crimes Enforcement Network (FinCEN) released additional guidance for the PPP through the Interim Final Rule[2], as well as the SBA's[3] and FinCEN's Frequently Asked Questions (FAQS).[4]

In addition, the PPP received additional funding on April 24, 2020. With an additional $310 billion dollars of funding allocated—nearly doubling the size of the program[5]—more lenders participating in the program will be impacted. With respect to Bank Secrecy Act/Anti-Money Laundering (BSA/AML) programs these lenders (banks and non-banks alike) should consider how the PPP loan program intersects with their AML program requirements. In particular, institutions should consider how a PPP loan might impact their AML programs' obligations with respect to collecting, identifying, certifying, and risk assessing their customers' information, especially in the absence of additional guidance.

For an overview of Deloitte's initial view of the PPP loan considerations for financial services industry, please read here.[6]

Beneficial ownership – existing and new customers

One goal of the CARES Act and PPP is to have loans originated and disbursed quickly, and, with the second injection, more widely distributed. The initial guidance from the SBA's Interim Final Rule indicated that financial institutions did not need to verify beneficial ownership information for existing customers, though were less clear for new customer's obligations.[7] Lenders should evaluate both existing and new customers to confirm that they properly address the new, complicated program guidelines and requirements (e.g., eligibility and timely disbursement) to manage the BSA/AML operational risk of the program.

For existing customers, lenders should consider the PPP loan beneficial owner information in relation to what it has documented for the same customers in its know your customer (KYC) system. On April 13, 2020, the SBA and FinCEN addressed a lender's responsibilities with regards to collecting beneficial ownership information. For existing customers, there is no requirement to re-verify information, unless as "required by the institution's risk-based approach." If lenders have not yet collected beneficial ownership information on existing customers, there is no requirement to verify this information before disbursement.[8] This guidance for PPP loans is in line with FinCEN's 2018 ruling that exempts covered institutions from re-verifying extensions of loans that do not require underwriting review or approval.[9] However, institutions should evaluate if there are changes based on the PPP loan to KYC comparison.

For new customers, the updated FAQs revealed a difference between the information required for the PPP loan and the BSA/AML requirements, including the 2018 Customer Due Diligence Rule Customer Due Diligence Requirements for Financial Institutions (CDD Rule). A lender should still follow its processes for onboarding, collecting, and verifying due diligence information, and risk rating customers, that may extend beyond the information provided in the PP loan application and PPP loan due diligence.

For both new and existing customers, the SBA requires lenders to collect and verify beneficial ownership "pursuant to the lender's risk based approach to BSA compliance." The SBA PPP requires that lender's collect information from natural persons with more than a 20 percent or more ownership stake. Lenders should follow their procedures and policies for beneficial ownership information or collecting new beneficial ownership information with a focus on high-risk customers, regardless of the SBA or CDD thresholds.

Authorized signers

According to the SBA, lenders may rely on the representation of a single individual's signature as an "authorized representative" of the applicant.[10] However, the SBA notes that lenders should take appropriate steps to confirm that the authorized signer has and meets the requirements of the PPP program. Further, BSA/AML Officers should confirm that authorized signers exist within the KYC file, and evaluate if there have been changes in the ownership structure in period between the last time the KYC file was updated and the loan application.

Risk rating

As part of normal client on-boarding, the CDD Rule requires financial institutions to conduct due diligence in order to understand the nature and purpose of the customer relationship. While the SBA and FinCEN have suggested that lenders are able to use previously collected beneficial information for existing customers, the guidance does not provide additional insight on how lenders should approach risk rating customers with the PPP loan. Lenders should consider if the new loan or the new loan information (e.g., beneficial ownership and associated percentages) from the existing customer is ingested or needs to be uploaded into the customer risk rating tool. BSA/AML Officers and their staff should consider operational processes (e.g., additional due diligence or enhanced due diligence) for risk rating changes to existing customers and generate a risk rating for new customers.

Immediate-term questions for BSA/AML officer to consider:

KYC considerations

- What is a reasonable timeframe to begin the risk assessment and verification of existing and new customers' beneficial ownership information after loan disbursement?
- Does the lender's CDD policy require beneficial ownership or other re-verification of customer information provided on the PPP loan with a focus on high-risk customers?
- What are the lender's obligations if an individual is a beneficial owner of 20 percent on multiple companies, given that the SBA's guidance limits loans to one customer? Do the multiple appearances make sense given what is known about the customer?

Transaction monitoring considerations

- Should the institution run transaction monitoring rules on the direction of the payments – outgoing loan disbursements (e.g., large disbursements relative to the expected loan durations of 2.5 months or if the employee name on the payroll provided are not the individuals receiving loan proceeds)?
- Do new accounts only include loan proceeds?
- Are there any additional risk factors such as monitoring for geographic location?
- Does the institution have transaction monitoring rules that would identify similar minority owners or employees on PPP loans?
- Should institutions consider PPP loans sold in the secondary market as transferable securities?

Longer-term considerations:

- Lenders exhausted the first tranche of PPP funding—nearly $350 billion—within two weeks. Due to demand, financial institutions expect the second tranche to go even more quickly. Are AML compliance programs adequately staffed for future rounds of PPP funding and the new customers that may accompany it?
- Whereas the SBA has stated it will hold harmless any lender that relies on borrower's documentation for loan forgiveness[11], should the lender proactively collect documentation for the customer as it would normally for loans the lender assumes and were not forgiven (or only partially forgiven)?

Conclusion

Through their guidance, regulators and FinCEN appear to be balancing the necessity of speed of disbursement with institutions' BSA obligations. However, BSA/AML Officers should prepare for the operational considerations of the in-progress guidance. In its April 3, 2020 notice to financial institutions on complying with the BSA during the COVID-19 pandemic, FinCEN stated that it expects financial institutions to "***diligently*** adhere to their BSA obligations" (emphasis added).[12] In a risk-based approach, it may be wise for a lender to perform its AML program obligations and responsibilities to loans the lender assumes after the funding and forgiveness processes are complete.

This is part of a series of insights from the Center for Regulatory Strategy on the implications of the CARES Act on the financial services industry. We–like you–are closely monitoring any developments that will emerge after the enactment of the law, including interpretive guidance from both the SBA and FinCEN on requirements for lenders. Please visit our CARES Act summary page here for more information on the impact to the financial services industry.

Contacts

Clint Stinger
Principal
Deloitte Risk & Financial Advisory
Deloitte Transactions and Business Analytics LLP

Josh Hanna
Principal
Deloitte Risk & Financial Advisory
Deloitte Transactions and Business Analytics LLP

Deloitte Center for Regulatory Strategy

Irena Gecas-McCarthy
FSI Director, Deloitte Center for Regulatory Strategy, Americas
Principal
Deloitte Risk & Financial Advisory
Deloitte & Touche LLP

Austin Tuell
Manager
Deloitte Risk & Financial Advisory
Deloitte & Touche LLP

Kyle Cooke
Senior Consultant
Deloitte Risk & Financial Advisory
Deloitte & Touche LLP

1 US House of Representatives, "Coronavirus Aid, Relief, and Economic Security (CARES) Act," accessed April 22, 2020.
2. Small Business Administration (SBA), "Business Loan Program Temporary Changes; Paycheck Protection Program," accessed April 22, 2020.
3. SBA, "Paycheck Protection Program Loans Frequently Asked Questions (FAQs)," accessed April 22, 2020.
4. Financial Crimes Enforcement Network (FinCEN), "Paycheck Protection Program Frequently Asked Questions (FAQs)," accessed April 22, 2020.
5. SBA, "Paycheck Protection Program (PPP) Report"; accessed April 22, 2020; As of April 16, 2020, when the first tranche of funding for the program was exhausted, 4975 lenders had approved 1.66 million loans totaling $342.3 billion dollars.
6. Deloitte, "The CARES Act's Paycheck Protection Program: Impact on financial services (as of 4/10/2020)," accessed April 22, 2020.
7. SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program," accessed April 22, 2020.
8. Financial Crimes Enforcement Network (FinCEN), "Paycheck Protection Program Frequently Asked Questions (FAQs)**,"** accessed April 22, 2020.
9. FinCEN, "The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic," accessed April 22, 2020.
10. SBA, "Paycheck Protection Program Loans Frequently Asked Questions (FAQs)," accessed April 22, 2020; Question 11.
11. SBA "Business Loan Program Temporary Changes; Paycheck Protection Program," accessed April 22, 2020.
12. FinCEN, "The Financial Crimes Enforcement Network Provides Further Information to Financial Institutions in Response to the Coronavirus Disease 2019 (COVID-19) Pandemic," accessed April 22, 2020.