



COVID-19 UPDATE FOR THE WEEK ENDING 4/24/2020

1. EIP Payments

a. Garnishments

There have been a number of questions concerning garnishments of the stimulus checks.

The ABA held a webinar last Friday with a representative of the Treasury and this issue was discussed. This is a summary from that call:

- Federal or State obligations (such as back taxes or student loans) will NOT be deducted from the payment
- Back Child Support WILL be deducted from the payment - Treasury is required by law to do this
- There is nothing in the CARES Act to prevent garnishment or offsetting bank fees, overdrafts or bad checks against these payments
 - However, each institution should make a policy decision regarding this. There could be reputational risk in offsetting overdrafts or bank fees, etc. against these payments that are for rent, groceries, etc. Consider a notice to this effect with a short-term loan for the overdrawn/bad check amount

A number of trade groups (including the ABA) sent a letter to congressional leaders urging them to exempt the CARES Act economic impact payments from garnishment orders. While the CARES Act exempted these payments from offset for debts owed to federal and state agencies (except for child support), it failed to address court-ordered garnishments to pay creditors, the groups noted.

The letter states that “Unfortunately, with regard to stimulus payments, Congress failed to define these payments as benefits subject to preemption from garnishment, and as a result, with regard to any legal garnishment, depository institutions have no discretion and are obligated to comply with applicable state laws and court-ordered garnishments.”

[Read the Letter](#)

An ABA inquiry to 23 core providers this weekend found that banks wishing to prevent EIPs from being automatically applied to any negative account balances will generally need to implement new procedures. Banks should proactively reach out to their core provider to understand their options for this current round of EIPs and for another possible next wave of payments in the future.

b. Payments to Deceased Customers

At this point in time the IRS has not issued any guidance on whether a bank has any responsibility to return a payment made to a deceased customer regardless of the date of death. On a call with ICBA today this question was raised. They referred us to the IRS and NACHA FAQ's, but I haven't been able to locate any IRS FAQ's on this topic yet.

c. Other items from the ABA call

- Deposit to the identified account as directed
- If the Acct #s match but names do not refer to Treasury 31CFR Part 210
- If a payment comes into a closed account and a new account has been opened for the same owners, still reject the payment.
- Overpayment and misdirected payment will be handled by the IRS. Treasury does not have the authority to hold banks responsible.

2. Second Round of PPP Funding in the Works

The Senate and House have passed legislation to provide more than \$320 billion in new funding for the Small Business Administration's Paycheck Protection Program. The bill is on its way to President Trump and he is expected to sign it.

Of the approximately \$320 billion appropriated for PPP loans, a minimum of \$30 billion will be set aside for community development financial institutions, banks, and credit unions with less than \$10 billion in assets. Another \$30 billion at least will go to banks and credit unions with assets between \$10 billion and \$50 billion. (Institutions in these categories may originate PPP loans above these levels.) The bill also includes an additional \$60 billion in funding for the SBA's Economic Injury Disaster Loan program.

3. Insiders and PPP Loans

The Federal Reserve Board announced an interim final rule to temporarily modify the Board's rules so that certain bank directors and shareholders can apply for PPP loans for their small businesses. The Board's change will allow those individuals to apply for PPP loans, consistent with SBA's rules and restrictions which prohibit owners of more than 30%, Key Employees, or Officers of the Lender Bank from obtaining a PPP loan from their Bank. **The change only applies to PPP loans.** The rule change is effective immediately upon publication and will be in place through June 30, 2020.

The Fed added that any PPP loans extended to bank directors and shareholders must conform to SBA's recent guidance, which states that the eligible business must follow the same process as any similarly situated customer or account holder and must not receive favoritism from the bank or prioritizing the application in any way. This determination does not impact the application of other restrictions that may apply to PPP loans, including Section 215.5 Loans to Executive Officers.

In addition, the SBA also had restrictions on loans to bank directors and certain insiders. Normally, SBA regulations would prohibit a PPP lender from making a PPP loan to "businesses in which the PPP lender or any of its Associates owns an equity interest." SBA regulations define an "Associate" of a PPP lender to be "[a]n officer, director, key employee, or holder of 20 percent or more of the value of the PPP lenders stock or debt instruments" and any entity in which one of these individuals or certain relatives "own or controls at least 20 percent." The SBA recently amended this rule to permit PPP lenders to make PPP loans to businesses owned by their directors and certain shareholders, subject to certain limits and without favoritism.

Federal Reserve Issuance

4. Treasury added FAQ #31 that addresses the qualification of businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations for a PPP loan

The FAQ states:

- All borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application.
- Borrowers still must certify in good faith that their PPP loan request is necessary
- Before submitting a PPP application, all borrowers should review carefully the required certification that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."
- Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.
- Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

5. Fannie and Freddie Scripts

Fannie Mae and Freddie Mac have each released optional scripts for servicers to use when communicating with customers facing financial hardship. The scripts provide tips for determining the nature of a customer's financial hardship and provide talking points that explain the GSEs' forbearance options.

[Fannie Mae Letter](#) [Freddie Mac Letter](#)

6. Q & A's on the paycheck Program Liquidity Facility

The Federal Reserve shared additional details on the PPPLF program and answered questions during a teleconference with ABA banker leadership. The PPPLF offers non-recourse loans to institutions eligible to make PPP loans, with the SBA-guaranteed loans pledged as collateral to the Federal Reserve Banks.

[PPPLF FAQ's](#)

7. SBA: PPP Loan Sales Guaranty

The SBA and Treasury, through updated FAQ's, confirmed that Sales of PPP loans into the secondary market do not require SBA approval. A PPP loan sold into the secondary market retains the 100% SBA guaranty.

The FAQ also reiterated guidance in the agency's April 2 interim final rule that a PPP loan may be sold into the secondary market at any time after it is fully disbursed and that it may be sold at a premium or at a discount to par value.

[April 17 FAQ's](#)

8. Fannie Mae - Selling Loans in Forbearance Due to COVID-19

Fannie Mae will temporarily accept delivery of loans in forbearance that meet specific eligibility requirements and with payment of a loan-level price adjustment, as described in Lender Letter LL-2020-06.

In addition, the FHFA announced that under a new policy, servicers will only be required to advance four months of missed payments for loans in forbearance. After that, the servicer is under "no further obligation to advance scheduled payments." This policy applies to all GSE servicers, whether they are banks or nonbanks.

[LL-2020-06](#)

[FHFA Release](#)

9. ABA Free Webinar

The ABA will host a free webinar this Friday, April 24, at 1 p.m. EDT to review applicable legal and regulatory requirements and other challenges and considerations for banks.

The webinar will cover: the implications of the CARES Act forbearance provisions; the latest guidance from the CFPB, GSEs and other agencies; the interplay between CARES Act forbearance requests and the CFPB's loss mitigation servicing rules; CARES Act forbearance requests for borrowers in foreclosure and bankruptcy; considerations for portfolio loans not subject to the CARES Act; and challenges facing borrowers nearing the end of their forbearance period.

[Registration](#)

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