Supplement to the FCA Informational Memorandum on the Paycheck Protection Program

This guidance document supplements the July 14 informational memorandum (PDF) issued by the Farm Credit Administration to provide guidance to Farm Credit System institutions on the Paycheck Protection Program (PPP) for small businesses affected by the COVID-19 pandemic. We will update this document periodically with guidance on loan reporting, underwriting criteria, and other matters, as necessary.

Is statutory borrower stock[1] required on a PPP loan?

FCA has reviewed the PPP set forth in section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act (PDF)),[2] the U.S. Small Business Administration's (SBA) related interim final rule (PDF), and applicable guidance and forms provided by Treasury and SBA, and has determined that statutory borrower stock required in section 4.3A of the Farm Credit Act of 1971 does not apply to new borrowers from a System institution with respect to loans disbursed through the PPP.

FCA believes this determination implements the clear intent of the CARES Act to minimize costs (including fees) and that a lender will receive no direct benefit from the borrower for making a PPP loan (other than the stated interest rate). In addition, the interim final rule prescribes the same loan terms for all PPP loans. Requiring the purchase of stock is inconsistent with the program and the interim final rule.

PPP borrowers who do not acquire stock will not be eligible to receive patronage or vote in institution affairs. If a new PPP borrower engages in any other lending or membership activity of the System institution, the borrower must hold statutory borrower stock, as with any other credit or related service.

Can a System institution extend a PPP loan to anyone?

System institutions may extend credit under the PPP loan program to applicants who are eligible to receive financing under the Farm Credit Act and FCA regulations. System institutions may consider a PPP loan as either addressing a direct financing need or an "other credit need" of an eligible borrower, consistent with previously provided FCA guidance.

Is a written waiver of certain borrower rights required to obtain a PPP loan from a System institution?

Yes, an applicant must waive the right to distressed loan restructuring, the right to credit reviews, and the right of first refusal to receive a PPP loan from a System institution. Normally applicants cannot be required to waive these rights in exchange for a loan from the System, but the unique structure of PPP loans means a System institution cannot offer a

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[1] The statutory minimum borrower stock requirement under section 4.3A of the Farm Credit Act of 1971 is $1,000 or 2% of the loan amount, whichever is less.

[2] P.L. 116-136.

PPP loan without the waiver. System institutions should therefore explain to applicants that PPP financing cannot be extended without the written waiver.

See FCA regulation 617.7010(b), which explains how to waive these rights for loans guaranteed by the SBA under the 7(a) loan guarantee program, which covers PPP loans.

The waiver should not be part of the loan contract itself because the terms and conditions of the contract are controlled by the SBA. Instead, the waiver may be either entirely separate or incorporated into other loan notice and disclosure documents (as long at the borrower signs the waiver language section).

We encourage institutions to inform borrowers that SBA guarantees offer similar borrower protections as those being waived.

Is any notice required before pooling and selling a PPP loan into the secondary market?

Yes, section 8.9 of the Farm Credit Act requires institutions to give borrowers advance written notice if their loans will be pooled and sold to the secondary market. They must also inform the borrowers that the sale of their loans will result in a loss of certain borrower rights. This information must be separate from other information on loan terms and conditions, but not necessarily in a separate document.

The notice must also inform the borrower that, within three days of a loan commitment, the borrower has the right to refuse the sale of his or her loan into the secondary market.

Are other businesses owned by full- and part-time farmers that are eligible for financing by System institutions also eligible for PPP loans from System institutions despite the lack of recourse to the full- or part-time farmer-owners?

Yes, consistent with the second question above, System institutions may extend credit under the PPP loan program to applicants who are eligible to receive financing under the Farm Credit Act and FCA regulations. While existing FCA guidance on eligibility and scope of financing requires the full- or part-time farmer-owner to sign as an obligor on the other business loan, the CARES Act (PDF) and the SBA's related interim final rule (PDF) do not allow for personal guarantees. Therefore, FCA does not require full- or part-time farmers to cosign or guarantee PPP loans.

This exception applies only to PPP loans. Under FCA regulations 12 C.F.R. §613.3005, "loans to farmers shall be on an increasingly conservative basis as the emphasis moves away from the full-time bona fide farmer to the point where agricultural needs only will be financed for the applicant whose business is essentially other than farming."

Furthermore, FCA does not require the full- or part-time farmer to have an existing lending relationship with the System institution. The full- or part-time farmer, either directly or indirectly, must own the majority (i.e., 50% or greater) interest of the entity being financed. This applies whether or not the farmer is already a borrower of the institution. This guidance again applies only to PPP loans.

When a System institution makes a PPP loan using this guidance, the institution must certify in the loan file that the PPP loan meets all other FCA requirements for eligibility and scope of financing.

What are the reporting requirements for loans made under the PPP?

First, the institution should notify its FCA examiner-in-charge if it is participating, or plans to participate, in the PPP.

Second, the institution should complete the questionnaire we have developed to collect information on each institution's PPP lending activities. Lending activities represent the total volume and number of loans that the institution has approved and closed. Total volume reported would be the sum of the principal amount of all PPP notes.

FCA's chief data officer sent out the first PPP questionnaire on Friday, April 17, along with instructions for completing and submitting it. This questionnaire covered PPP loans made and closed from April 6 to 17. Originally, we had asked to receive responses to this questionnaire by April 30 (that is, within 14 days of issuing it), but we have since extended the deadline for the first questionnaire to May 7.

To reduce the reporting burden associated with PPP reporting, FCA is extending the reporting period covered in the sixth and all subsequent questionnaires from two to four weeks. The sixth questionnaire, which will cover PPP loans made and closed from June 13 to July 10, was sent on July 7 and will be due by close of business July 24. Questionnaires will be due within 14 days after the covered reporting period ends.

The following information will be collected in the PPP questionnaire:

1. Number and volume of PPP loans originated to new borrowers
2. Number and volume of PPP loans originated to existing borrowers

Number and volume of PPP loans closed will be collected by loan type. A PPP loan is made through the borrower's eligibility to receive financing from a System institution. Therefore, the loan type assigned to a PPP loan should be consistent with the loan type that the borrower would receive if he or she were receiving a similar non-PPP loan.

We would expect that PPP loans made to a bona fide farmer or rancher (under § 613.3000) would be reported under the "production and intermediate term" loan type (even if the PPP loan is to an existing borrower who currently only has a real estate mortgage loan).

Below is an example of the reporting template:

Loan Type	Number of Loans	Volume of Loans
Real Estate Mortgage		
Production and Intermediate Term		
Farm Related Business		
Processing and Marketing		
Cooperatives		
Communication		
Energy		
Water/Waste Disposal		
Rural Residents		
Other		

May a System director obtain a PPP loan from the institution where he or she serves as a director?

Probably. Based on the SBA's draft interim final rule (PDF), a lender may make a PPP loan to one of its directors only when the director owns less than a 30% equity interest in that lender and when the same loan process is followed for any of the lender's similarly situated customers or accountholders. The SBA strictly prohibits prioritizing a director's application or reducing the processing time for a director's application.

Therefore, a System association may make a PPP loan to one of its directors as long as the director currently owns no more than 30% of the association's equity and the loan is provided in a similar manner as other PPP loans made by the association. FCA recognizes that a situation in which a director holds equity of 30% or more in a System institution is unlikely to arise.

What are the reporting requirements for young, beginning, and small (YBS) farmer and rancher loans made under the PPP?

Section 4.19(b) of the Farm Credit Act of 1971, as amended, requires each Farm Credit System district bank to annually obtain reports on the YBS activities of the associations under its supervision. The bank is then required to provide to FCA an annual report summarizing the YBS operations and achievements of the associations in its district.

As a result, we expect PPP loans made to borrowers in any of the three YBS categories to be reported in the 2020 YBS report. Most of the PPP loans, by dollar volume and loan number, are to existing customers, which should make it easier for your institution to identify PPP loans that meet YBS reporting criteria.

We recognize there are instances in which an institution may not have the information needed to determine if a borrower meets one or more of the YBS definitions — particularly if the borrower is new to the institution. However, we expect each institution to make a good-faith effort to identify and report YBS data based on the information available.

As in prior years, we will issue instructions near the end of the year for completing YBS reports. For reference, you can read our 2019 instructions (PDF); we do not expect the 2020 instructions to be substantially different.

If you have questions about the YBS reporting requirements, please contact Sal Iannetta, Senior Policy Analyst, at (703) 883-4326 (iannettas@fca.gov).