

Commercial Lending Update

SEPTEMBER 2021

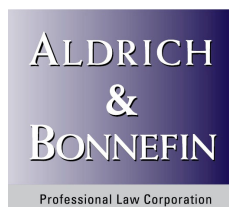
BANKING EXPERTS RECOMMEND AUDITING YOUR INSTITUTION'S PPP LOANS BEFORE THE FEDS DO

Now that the Paycheck Protection Program (PPP) is closed, banking experts recommend auditing each and every PPP loan to be ready for the investigations they expect to commence by the U.S. Department of Justice (DOJ) and the regulators. In addition, the past denial of certain lawsuits and class actions filed against creditors for prioritizing PPP access for existing customers is no guarantee that courts will rule the same way in the future. In addition to auditing the institution's PPP loans, the experts also recommend auditing the institution's processes and how its processes vary across its business lines. They recommend that a lender consider proactive communication with its regulator or a prosecutor if issues are identified during an audit.

According to industry experts, DOJ investigations have focused on companies and individuals who fraudulently received or tried to receive PPP loans, but they suspect future DOJ investigations will target banks that lent at higher rates. Insiders pointed out that the CFPB recently identified certain fair lending violations in connection with PPP loans. (Note the Newsletter

article above about a bank's recent fair lending violation for failing to advertise in Spanish when very few of its potential customers spoke Spanish with limited English proficiency.) Further, banking professionals warn of potential False Claims Act charges by federal investigators and whistleblowers.

Attorneys Mark Aldrich and Joel Cook have been assisting BCG members with their PPP loan portfolios. Contact Mark Aldrich by email at **MALdrich@ABLAWyers.com** and Joel Cook by email at **JCOok@ABLAWyers.com** with questions or for assistance.



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