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Procedures for Appealing SBA Decisions on Paycheck Protection Program (PPP) Loan Eligibility and Forgiveness

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On August 25, 2020, a new Interim Final Rule issued by the Small Business Administration (“SBA”) became effective. It explains how a PPP borrower may appeal a negative SBA loan review decision regarding either its eligibility to receive a PPP loan or the amount of loan forgiveness it receives to the SBA Office of Hearings and Appeals (OHA).

In general, a PPP borrower must submit an application for loan forgiveness to its PPP lender along with supporting documentation. See our articles on [Loan Forgiveness](#) and [Clarifications](#). The PPP lender makes the first determination of whether the borrower is eligible for loan forgiveness and for what amount. Upon making its decision, the PPP lender sends the application to the SBA for its final loan review decision

If the SBA issues a negative loan review decision, it may determine that the PPP borrower is ineligible for: (1) a PPP loan, (2) the PPP loan amount received (or that the borrower used the PPP loan proceeds for unauthorized uses), (3) PPP loan forgiveness in the amount determined by the PPP lender (whether the PPP lender decision was full or partial approval), and/or (4) PPP loan forgiveness in any amount.

Should the SBA deny full loan forgiveness or find the PPP borrower violated another aspect of the PPP, the borrower may appeal. This article describes the main components of that appeal process.

Filing an Appeal Petition in Response to the SBA Loan Review Decision

A PPP borrower may appeal a negative loan review decision to the OHA only if it was a **final** decision made by **the SBA**, and not just the PPP lender. One thing to note before diving into the appeals process is that even after you, as the borrower, file an appeal of the SBA’s PPP loan review decision, it will **not extend the deferral period** of your PPP loan. You must begin making payments of the principal amount and the interest on the remaining balance of your PPP loan when the SBA remits the loan forgiveness amount to your PPP lender or notifies your PPP lender that you are not entitled to any loan forgiveness. If for some reason you didn’t apply for forgiveness of the full amount of your PPP loan, the deferral period for paying back that portion of your loan ends 10 months after receipt of the loan.

If you wish to appeal the SBA’s negative loan review decision, you must file an appeal petition

with the OHA and provide a copy to the SBA within **30 calendar days** after (i) you receive the final SBA loan review decision or (2) your PPP lender notifies you of the decision, whichever is earlier. If your appeal is untimely, it will not be considered. Therefore, it is important to keep the deadline in mind.

Included in the Appeal Petition

The Rule states that the appeal petition must include (1) how and why the OHA can hear the PPP borrower's appeal, including proof that the appeal was timely filed, (2) a copy of the SBA loan review decision that is being appealed or a description of the decision if the copy is unavailable, (3) a full and specific statement, including all factual information and legal arguments, as to why the SBA loan review decision is clearly wrong, (4) what result the PPP borrower wants and (5) the name, address, telephone number, email address and signature of the borrower appealing the decision and/or its attorney.

The Rules also require that the PPP borrower include certain financial information in the appeal petition. The PPP borrower must include signed copies of its payroll tax filings reported to the IRS for the relevant period of time. Also, if the borrower's PPP Loan Forgiveness Application did not include state quarterly business and individual employee wage reporting and state unemployment insurance tax filings, the PPP borrower must include those documents as well. The PPP borrower may include in the appeal petition an explanation as to why any of the required financial information is unavailable or irrelevant to the appeal.

Once Appeal Petition is Received

After receiving the appeal petition, the SBA will file its response with OHA and provide a copy to the PPP borrower. OHA will assign the matter to a judge, who will then review the SBA's negative loan review decision and the PPP borrower's appeal documents. Either the PPP borrower or the SBA may request, or the Judge on its own initiative may hold, an oral hearing to obtain live testimony as part of the appeal.

Unless additional time is requested and granted, all information must be provided to the Judge within 45 calendar days from the date of OHA's receipt of the appeal. The Judge will issue his or her decision within another 45 calendar days and will provide the decision to the PPP borrower and the SBA.

Final OHA Decision

The judge will reverse the loan review decision if it is determined that the SBA's decision was based on a clear error of fact or law. The Judge's decision is an initial decision. However, the initial decision will **become the final decision** of the SBA 30 calendar days after it was provided to the PPP borrower and the SBA, **unless** a request for review or a request for reconsideration is filed.

Publication of OHA Final Decision

OHA decisions are typically published on their website without redaction, and this may include the PPP borrower's confidential business and financial information (CBI) or personally

identifiable information (PII) if the information is deemed “decisionally-significant or otherwise necessary for a comprehensible decision.” The PPP borrower may try to protect the information as confidential and may also request redactions of the Judge’s decision.

If you have further questions or need assistance regarding PPP loan forgiveness, please contact your PBPA attorney or your accountant.