



SBA creates administrative process for appealing PPP loan decisions

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Effective August 25, 2020, a new rule published by the United States Small Business Administration (SBA) establishes an administrative process for appealing SBA loan review decisions under the Paycheck Protection Program (PPP). Under the process, a borrower may challenge written decisions by the SBA regarding ineligibility and loan forgiveness, including a decision that a borrower:

- Was ineligible for a PPP loan in the first instance
- Was ineligible for the PPP loan amount received or used PPP proceeds for unauthorized purposes
- Is ineligible for PPP loan forgiveness in the amount determined by the lender in its full approval or partial approval decision issued to SBA and/or
- Is ineligible for PPP loan forgiveness in any amount when the lender has issued a full denial decision to SBA.

Notably, the new rule does not provide an avenue for appealing decisions made by a lender concerning a PPP loan or PPP loan determinations made by the SBA's Office of Inspector General.

To dispute a final SBA loan review decision, the borrower must file an appeal petition with the SBA Office of Hearings and Appeals (OHA) within 30 days of (i) receipt of the final SBA loan review decision or (ii) notification by the lender of the final SBA loan review decision, whichever is earlier. The new rule identifies a specific list of items and documents which must be included in the appeal petition. Only the borrower, as opposed to the borrower's owner or shareholders, has standing to file an appeal. OHA is required to dismiss an appeal which does not comply with the timing requirements or standing requirements. Given the tight timelines, borrowers who receive adverse review decisions from the SBA should be ready to move swiftly with regard to launching an appeal.

OHA will assign each appeal to an administrative judge, who will review the SBA final loan review decision to determine whether it was based on clear error of fact or law. The borrower bears the burden of proof. The judge will attempt to issue an "initial decision" within 45 days after the record closes in the appeal, in which the judge " may affirm, reverse, or remand an SBA loan review decision." Even if the borrower's appeal is successful, the new rule precludes recovery of attorneys' fees under the Equal Access to Justice Act.

Unless a request for review by the SBA Administrator or a request for OHA reconsideration is filed, OHA's initial decision will become the "final decision" within 30 days of service. To preserve a right for judicial review, a borrower must exhaust its administrative remedies by filing a request for review by the SBA Administrator.

OHA will publish the final decisions on PPP loan review appeals on its website, which serve as precedent for other appeals involving PPP loan review decisions.

If you have any questions regarding this development, please contact the authors or your DLA Piper relationship attorney.

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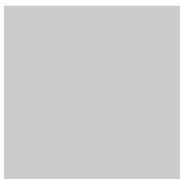


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