

SBA and Treasury Publish New PPP Guidance, Delineate Loan Forgiveness Appeal Procedures

Late on August 11, the Small Business Administration (SBA) and the Treasury Department published new, limited guidance on Paycheck Protection Program loan forgiveness: [PPP FAQ updates](#) and [PPP loan forgiveness FAQ updates](#). The SBA also published an [interim final rule](#) detailing the procedures that must be followed when appealing a loan forgiveness decision by the SBA.

Loan and Forgiveness-related Guidance

The new guidance provides that payroll costs include payment for vision and dental benefits, and thus insurance-related payments are not limited simply to group health insurance benefits. The guidance also clarifies certain loan forgiveness issues for borrowers who received EIDL loans, including that:

- Lenders must confirm the EIDL advance that will automatically be deducted from the loan forgiveness amount by reviewing the borrower's EIDL advance information on the PPP Forgiveness Platform.
- Borrowers that received an EIDL advance in excess of the amount of their PPP loan will not receive any forgiveness on the PPP loan. This is because the amount of the EIDL advance will be deducted from the PPP loan forgiveness amount.

Interim Final Rule on Appeal Procedures

The SBA also issued an interim final rule outlining the procedures that borrowers must follow when appealing a decision by the SBA. The interim final rule clarifies that borrowers may appeal a final SBA loan review decision that finds a borrower:

1. Was not eligible for a PPP loan
2. Was ineligible for the PPP loan amount received, or used the loan proceeds for unauthorized uses
3. Is ineligible for loan forgiveness in the amount approved by the lender (if the lender fully or partially approved loan forgiveness)
4. Is ineligible for loan forgiveness in any amount (when the lender has issued a full denial to the SBA)

While most of the final rule outlines the legal procedures that must be followed for an appeal, including where it must be filed, the content of the appeal, page limitations, and other technical requirements, there are a few salient points for borrowers:

- This interim final rule governs only appeals of the SBA's final decision. It does not apply to a borrower's appeal of a decision by its lender. Those appeals must be made directly to the SBA.
- Appeals of the SBA decisions are made to the SBA Office of Hearings and Appeals.
- Appeal petitions may be dismissed if they do not include all of the required information.
- Only the borrower on a loan has standing to appeal an SBA loan review decision. The borrower may represent itself or be represented by an attorney.
- Appeal petitions must be filed within **30 calendar days** after (i) the borrower's 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 appeal typically will be limited to the written record on which the SBA based its decision, with no additional evidence or testimony. However, the judge may permit additional discovery and evidence if the SBA demonstrates

good cause for doing so. Interestingly, there does not appear to be a similar mechanism by which a borrower can request additional discovery or evidence.

- A decision generally will be made without an oral hearing, unless the judge orders an oral hearing to include witness testimony.
- At any time during the appeal, the borrower and the SBA may enter into a settlement agreement and jointly move for dismissal of the appeal.
- To prevail on the appeal, the borrower must prove by a preponderance of the evidence that the SBA loan review decision was “based on clear error of fact or law.”
- The appeal can result in the SBA’s decision being affirmed, reversed, or remanded to the SBA for additional consideration.
- A final decision on the appeal can be further appealed to federal court.

These appellate procedures will prove important as the SBA begins making decisions on forgiveness applications—notably, the SBA has confirmed that its loan forgiveness portal opened on August 10.

Our Chambliss team continues to monitor legal developments in connection with PPP loans and the forgiveness process, as well as other legal aspects of the COVID-19 pandemic.

Please contact [Jim Catanzaro](#), [Justin Furrow](#), or your relationship attorney if you have questions or need additional information.

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