

LITIGATION, TRIALS & APPEALS ADVISORY

Appeals from PPP Forgiveness Denials



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INTRODUCTION

The initial frenzy of PPP loans in the spring and summer of 2020 has given way to the practical realities of seeking loan forgiveness through lenders and the Small Business Administration (SBA). Luckily, the process is straightforward, although recipients should expect a somewhat drawn-out process given the extraordinary volume of loans and the significant administrative burden on lenders.

KEY TAKEAWAYS

These loans were designed to be forgiven, and generous timing provisions make it easy to request forgiveness, even months after disbursement, but that is no reason to dawdle when you consider the following factors:

- The timeline for forgiveness can run over one year if a borrower is initially denied.
- Appeals from lender denials go to the SBA, while SBA denials are internally appealable, but by this point in time, the review may have lasted for over one year without a suspension of payments.

WHAT TO KNOW

The defining feature of the PPP loan program is that the loans are forgivable, but the loans are only forgiven if borrowers have met the criteria regarding payroll retention; so the forgiveness process, while streamlined, does require a showing from borrowers that they have complied with the program's requirements. Borrowers must complete a loan forgiveness application, which is available from their lenders. A lender has 60 days to review and issue a decision, and the SBA has 90 days to submit payment to the lender—all told, nearly six months, even assuming the initial application is forgiven without further review. As with most things, the larger the loan and the more money at stake, the closer the review. Review of forgiveness applications is automated, with manual review of machine-flagged errors for loans under \$2 million. Greater scrutiny is applied to those loans over \$2 million.



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If the lender denies a request from a borrower, the borrower has 30 days to request a further review from the SBA—the SBA may accept or reject a review request within 30 days, then has 90 days to issue a determination. At this point, the review process may have lasted as long as 270 days.

If a decision from the SBA is unfavorable, a borrower may seek appeal under 13 C.F.R. § 134.1201 within 30 days. The appeal process will take approximately 120 to 130 days, during which payments continue apace. By this point, a disappointed borrower may have already spent one year seeking review and appeal, while making payments following the initial denial. A borrower should also be forewarned that interest may accrue during this appeal process, with forgiveness uncertain.

The speed and volume at which PPP loans were disbursed have given rise to a huge amount of fraud and otherwise improperly disbursed monies. Preliminary analysis by a congressional subcommittee shows that thousands of loans and billions of dollars may have been the subject of fraud, waste, or abuse. At the time of this writing, law enforcement has commenced prosecutions of well over 100 individuals for PPP loan fraud. A number of government agencies will continue to engage in heightened regulatory scrutiny of PPP loans, and many more investigations and prosecutions are inevitable. Businesses or individuals concerned about PPP loan application or forgiveness issues should consult with counsel proactively. And, of course, if any business or individual is contacted by law enforcement or any other government agency about PPP loan compliance, that entity should promptly seek advice of counsel.

CONCLUSION

For most, forgiveness of PPP loans is a simple and straightforward exercise with their lenders. Others will be forced to undergo a more demanding appellate review with the SBA. Careful preparation of documents and an active relationship with a lender will help smooth this process for all involved and, hopefully, avoid a lengthy appeals process.

QUESTIONS

If you have any questions, please contact a member of the Sherman & Howard [Litigation, Trials & Appeals Group](#).