

New Forgiveness Guidance from SBA Regarding PPP Loan Forgiveness

Last week the Small Business Administration ("SBA") issued new FAQs which address a number of loan forgiveness issues under the Paycheck Protection Program ("PPP"), as well as a common issue that arises under the Economic Injury Disaster Loan ("EIDL") program.

The SBA's guidance, including the promulgation of new regulations, state in relevant part:

1. The lender will make an initial decision on how much of a borrower's PPP loan should be forgiven. The lender's decision cannot be appealed.
2. The SBA will consider the lender's decision and enter its own decision. The borrower may appeal the SBA's decision, so long as a written objection is filed within 30 calendar days of the earlier of (i) the borrower's receipt of the SBA decision, or (ii) notification by the lender of the SBA's decision.
3. If an appeal is filed the SBA will issue its decision within 45 days.
4. An appeal must include copies of the borrower's payroll tax returns and bank account statements that support the borrower's position.
5. There is no discovery.
6. There is no hearing or oral argument.
7. An SBA administrative law judge ("ALJ") will rely exclusively on documents submitted by

the borrower, lender and SBA.

8. The borrower has the burden to prove that the SBA's decision was "clear error of fact or law".
9. The borrower may appeal an adverse decision by the ALJ by filing an application for reconsideration with the Administrator of the SBA. If this second appeal is not filed the borrower cannot challenge the ALJ's decision in the U.S. District Court.
10. All SBA decisions are published on the SBA's website. If the borrower wants to avoid publication of confidential or personal information it must apply for a protective order.
11. Even if the borrower ultimately wins the SBA will not reimburse the borrower's legal fees or costs.

Some borrowers received both PPP and EIDL loans. The initial \$10,000 funded under the EIDL loan was a grant, and does not need to be paid back. Yet, the \$10,000 EIDL grant will be deducted from the amount of the PPP loan that is forgiven. By way of example, if a borrower obtained a \$100,000 PPP loan and a \$50,000 EIDL loan, and the SBA decides that the entire PPP loan is forgiven, the \$10,000 EIDL grant will reduce the \$100,000 forgiven under the PPP loan. The net result is the borrower must pay its lender \$10,000, plus 1% interest, on the PPP loan, and \$40,000, plus interest, on the EIDL loan.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of COVID-19 on you or your business, please contact Joe Laferrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at joe.laferrera@gesmer.com, aaron.kriss@gesmer.com, or sean.gilligan@gesmer.com.



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