

# PPP Borrowers Take Notice

by Brittany M. Besler, J.D., CPA, MBA



## Davidoff Tax Law

Increasingly the Small Business Administration (SBA) has been sending Paycheck Protection Program (PPP) loan borrowers FINAL SBA LOAN REVIEW DECISION LETTERS (pictured on right). These specific letters look similar to the document request letters that the SBA sends out with some VERY IMPORTANT differences. First this is considered a FINAL DECISION by the SBA and borrowers only have **30 days from the date they receive this letter** to file an appeal petition in the SBA's portal. In our experience, some banks provided the borrowers the letter the same day they received it, other banks provided the letter days later. This can be a critical fact in your appeal, as the 30-day clock starts on the day the borrower **RECEIVED** the letter.

Appealing this final decision is no easy task, it takes time (and a significant amount of detail/exhibits) to prepare the appeal petition, so far the smallest one we've filed was just over 400 pages. This means that as soon as you see that above letter, contact your attorney immediately.

## Why is it important to act immediately?

- Because this is a final, appealable administrative decision.
- Because the borrower only has 30 calendar days to file an appeal, which needs to be very detailed, or it will lose its right to challenge the SBA's final decision.
- And because that deadline cannot be extended, not even by a judge.
- Without first exhausting the administrative remedies you cannot file in Federal District Court.

## History:

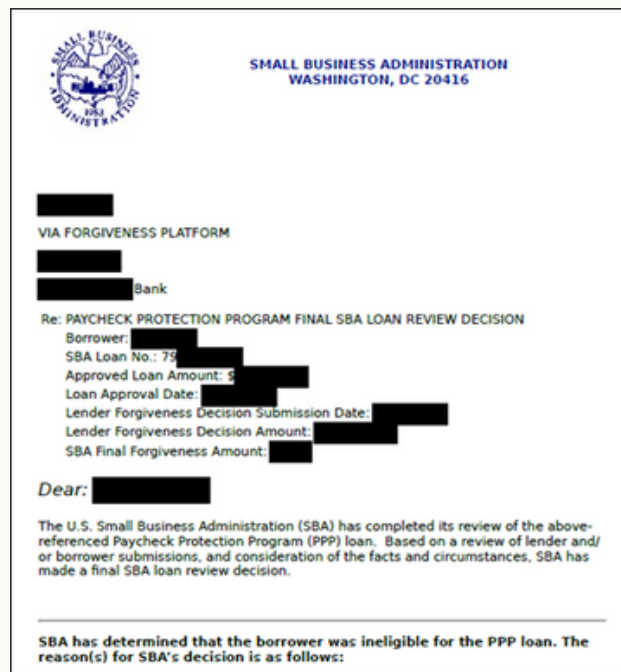
The Paycheck Protection Program (PPP) was a federal loan program designed to provide financial relief to small businesses impacted by the COVID-19 pandemic. The program provided loans to small businesses to cover payroll and other expenses, with the condition that the loans would be forgiven if certain criteria were met. However, not all businesses were able to receive PPP funds, and some who did receive funds were deemed ineligible or received less forgiveness than they expected. In these cases, businesses have the option to file a PPP appeal to challenge their eligibility, loan amount, or forgiveness amount.

According to the federal regulation, the borrower may seek review of a final SBA loan review decision, the "official written decision," and finding that the borrower:

1. Is ineligible for the loan;
2. Is ineligible for the loan amount received or used the loan proceeds for unauthorized uses;
3. Is ineligible for loan forgiveness in the amount determined by the lender in its decision issued to the SBA; and/or
4. Is ineligible for loan forgiveness in any amount, when the lender has issued a full denial decision to SBA.

The PPP appeal process is managed by the Small Business Administration (SBA), the agency responsible for administering the program. Businesses that were denied a PPP loan or did not receive the full amount they applied for can file an appeal with the SBA within 30 days of receiving notice of the decision. The appeal must be in writing and include the reasons why the business believes the decision was incorrect. The SBA has created an online platform for businesses to file an appeal, and the process generally involves submitting supporting documentation and a written statement explaining the businesses position.

Once the appeal is filed, the SBA will review the appeal and make a determination. If the SBA denies the appeal, the business has the option to request a hearing before an administrative law judge. The judge will review the evidence and make a recommendation to the SBA. The SBA will then make a final decision based on the judge's recommendation.



# PPP Borrowers Take Notice

by Brittany M. Besler, J.D., CPA, MBA



**Davidoff  
Tax Law**

It's important to note that the PPP appeal process is not guaranteed, and businesses may not receive the additional funds or forgiveness they are seeking. However, businesses that feel they were unfairly excluded or received less than they deserved should consider filing an appeal as it provides an opportunity for their case to be reviewed and reconsidered.

## What should borrowers do upon receipt of this SBA letter?

- Contact an attorney immediately. **Note that a CPA is not authorized to represent your business during the appeals process.** The ONLY individuals who can represent your company in the appeals process are: an owner; a company officer; an attorney.
- Borrowers have only 30 calendar days from the date they receive the SBA notice within which to file an appeal petition. These petitions take significant time to prepare. They must include all grounds upon which the SBA decision is alleged to be in error, citations to facts and legal authorities, and should be supported by exhibits.
- The 30-day deadline to file an appeal cannot be extended – not even by an administrative law judge. Although a borrower may ask its bank to contact the SBA to reconsider its decision, the deadline for an appeal is not suspended or extended by doing so.
- Do not wait to contact an attorney until after you hear from the SBA. By that time, it may be too late to prepare the documents necessary to appeal.

## Federal law governing appeals of SBA final decisions

The SBA letters notify borrowers that, "Pursuant to 13 CFR § 134.1201(b), the borrower has the right to appeal to SBA's Office of Hearings and Appeals ("OHA") a final SBA loan review decision . . ." This notice is not in bold or highlighted. Some borrowers skim over it or do not appreciate its significance. Some borrowers fail to file a timely appeal because they did not read or understand that this letter is a "final decision" from which an appeal is the only remedy to challenge the SBA's determination. This can be especially true when the bank you borrowed from may have informed you of full forgiveness by their review team.

## We can help

Lawyers at Davidoff Tax Law can help borrowers ensure that their rights are protected. We have lawyers who are experienced in CARES Act pandemic relief programs, including the Paycheck Protection Program. We have experience with SBA audits of PPP loans and loan forgiveness applications.

But, we can only help if you contact us immediately! It takes time to research the SBA's final decision, review all of the relevant facts, research specific legal issues, and prepare the appeal petition and exhibits.

There are NO EXTENSIONS of TIME within which to file the appeal petition. Borrowers have 30 calendar days from the date they receive the SBA letter. So, don't delay. Contact us immediately upon receipt of an SBA final decision.

## CONTACT US

Davidoff Tax Law, LLC  
1249 South River Road, Suite 305  
Cranbury, NJ 08512

Tel: 732-274-1999 x1600

Txt: 732-274-1600

On the web: Davidoff Tax Law, LLC  
Email: [brittany@taxdavidoff.com](mailto:brittany@taxdavidoff.com)