



Release Date: January 19, 2021

ACTION: Procedural Notice

References:

https://www.sba.gov/sites/default/files/2021-01/5000-20077_0.pdf?utm_campaign=NEWSBYTES-20210119&utm_medium=email&utm_source=Eloqua

SBA Procedural Notice: Paycheck Protection Program Borrower Resubmissions of Loan Forgiveness Applications Using Form 3508S, Lender Notice Responsibilities to PPP Borrowers and Offset of Remittances to Lenders for Lender Debts

Overview

This notice is to inform PPP lenders of the following:

1. The process for borrower resubmission of loan forgiveness applications using PPP Loan Forgiveness Application Form 3508S (SBA Form 3508S)
2. Lender responsibilities to notify borrowers of:
 - a. Lender decisions to deny forgiveness in full
 - b. SBA loan review decisions and borrower appeal rights to SBA's Office of Hearings and Appeals (OHA); and
 - c. SBA remittance of loan forgiveness payments; and
3. Lender responsibilities in the event of offset of PPP remittances to lenders by the Treasury Offset Program (TOP)

Borrower Resubmission of a Loan Forgiveness Application using SBA Form 3508S

Borrowers that were eligible to use SBA Form 3508S but applied for loan forgiveness using PPP Loan Forgiveness Application Form 3508EZ or 4508 are permitted to resubmit their loan forgiveness application to their lender using SBA Form 3508S at any time until the SBA notifies the lender of a final SBA loan review decision or remits to the lender the PPP loan forgiveness payment.

If the lender receives a timely borrower resubmission of a loan forgiveness application using SBA Form 3508S, the lender must immediately request the withdrawal of any lender loan forgiveness decision by notifying the SBA through the SBA Paycheck Protection Platform (<https://forgiveness.sba.gov/accounts/login/?net=/>). Resubmissions after SBA notification to the lender of a final SBA loan review decision or remittance of loan forgiveness payments are not permitted.

After a borrower's resubmission of a complete loan forgiveness application, lenders must issue a decision to the SBA on the new loan forgiveness application no later than 60 days after receipt of the complete loan forgiveness application. When the lender issues its forgiveness decision to the SBA on the new loan forgiveness application, the SBA will, subject to any review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any accrued interest through the date of payment, not later than 90 days after the lender issues its forgiveness decision to the SBA.

Lender Notification Responsibilities

Lenders must keep borrowers informed of certain actions during the PPP loan forgiveness process. Lenders must notify borrowers in writing within 5 business days of any of the following:

- A decision by the lender to deny forgiveness in full.



- A decision by SBA declining a request for review by a borrower of a lender's decision to deny forgiveness in full.
- A final SBA loan review decision, including an SBA loan review decision on forgiveness (whether approving or denying forgiveness in full or part).
- Remittance by SBA to the lender of the loan forgiveness amount, whether partial or full.

The information required to be included in these notifications to the borrower is described below. Additionally, after sending the notice to the borrower, the lender must upload a copy of the notification correspondence to the SBA Paycheck Protection Platform (referenced above).

Lenders must try to avoid providing erroneous information to borrowers regarding requests for SBA review of lender loan forgiveness decisions or regarding borrower appeal rights, which are limited to certain specific circumstances. Borrowers may request SBA review only of a lender decision denying a loan forgiveness in full.

Lender Decision to Deny Forgiveness in Full

If a lender issues to the SBA a decision denying the borrower's loan forgiveness application in full, the lender has to notify the borrower in writing of that decision. Such notice is to be provided within 5 business days and include the reasons that the lender concluded that the borrower is not entitled to loan forgiveness in any amount and inform the borrower that the borrower has 30 calendar days from receipt of the notification to seek, through the lender, SBA review of the lender's decision. Lenders are to upload a copy of the notification correspondence to the SBA Paycheck Protection Platform at the time the lender submits its full denial decision to the SBA.

Lenders who receive a borrower's request for SBA review of a full denial of forgiveness decisions must submit those requests to the SBA through the SBA Paycheck Protection Platform within 5 business days of receipt. SBA will accept or decline a borrower request for review. SBA will notify the lender if the SBA decides to review the lender's decision or if the SBA declines a borrower's request for review. If a borrower does not timely request SBA review or if the SBA declines the request for review, the lender is responsible for notifying the borrower of the date on which the borrower's first PPP loan payment is due and the amount of the payment.

If the SBA decides to review the lender's decision, the SBA will issue an SBA final loan review decision to the lender upon completion of the review. The lender must send a copy of that decision to the borrower (as described below).

SBA Loan Review Decision

When SBA selects a PPP loan for an SBA loan review, SBA is going to provide the lender with a Notification of Paycheck Protection Program Loan Review (Loan Review Notification) through the SBA Paycheck Protection Platform. The Loan Review Notification will require the lender to upload certain additional documents to the SBA Paycheck Protection Platform. After completion of the loan review, the SBA will issue a final SBA loan review decision (which is an official written decision by the SBA) to the lender through the SBA Paycheck Protection Platform.

When the SBA issues a final SBA loan review decision to the lender, the lender must provide a copy to the borrower within 5 business days of the date of the decision. The SBA loan review decision is generally going to include the reasons for the SBA's decision, and, if applicable, the amount approved in the lender's forgiveness decision and the forgiveness amount determined by SBA.

Final SBA loan review decisions are appealable to the OHA by the borrower will include a notice of the borrower's right to appeal the decision per SBA IFR "Appeals of SBA Loan Review Decisions under the Paycheck Protection Program."



Per 13 CFR § 134.1201(b), a PPP borrower has the right to appeal to OHA only final SBA loan review decisions that find a borrower:

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

If no final SBA loan review decision was issued or if the final SBA loan review decision does not fall into one of the above categories, the borrower does not have a right to appeal to OHA. But the lender must not provide the borrower with erroneous information stating otherwise. Borrowers cannot file an OHA appeal of any decision made by a lender concerning a PPP loan.

Any appeals to OHA have to be made per SBA Rules of Practice for Appeals of Certain SBA Loan Review Decisions under the Paycheck Protection Program (13 § CFR 134.1201-134.1217) which includes:

- Appeal petition must be filed with OHA within 30 calendar days after the borrower's receipt of the final SBA loan review decision, or notification by the lender of the final SBA loan review decision, whichever is earlier;
- Borrower's appeal petition must include the basis for the OHA's jurisdiction, including evidence that the appeal is filed timely;
- Appeal must include a copy of the final SBA loan review decision that is being appealed.

OHA appeals and requests for review by the Administrator of a disputed internal decision or reconsidered initial decision are all administrative remedies that must be exhausted before judicial review of a final SBA loan decision in federal district court.

Borrower cannot appeal to OHA if, among other circumstances, the lender has issued a forgiveness decision to the SBA in an amount that is less than the forgiveness amount requested by the borrower and the SBA has remitted to the lender a forgiveness payment equal to the amount in the lender's forgiveness decision.

OHA is currently reviewing 13 CFR § 134 Subpart L for potential redrafting. Until there is a final rule update, this is accurate and effective guidance.

Remittance of Any Portion of the Loan Forgiveness Amount by SBA to the Lender

If the SBA has not provided a Loan Review Notification to the lender (so, the PPP loan has not been selected for an SBA loan review), the SBA will issue a Notice of Paycheck Protection Program Forgiveness Payment (Payment Notice) to the lender when it remits a loan forgiveness payment. The Payment Notice will provide information about the forgiveness remittance and will be available to the lender through the SBA Paycheck Protection Platform.

If the SBA issues a Loan Review Notification advising the lender that the loan has been selected for an SBA loan review, the SBA will issue a final loan review decision upon completion of the review. The final loan review decision may be accompanied by a loan forgiveness payment to the lender, if appropriate.

When the SBA remits a loan forgiveness payment to the lender, the lender must notify the borrower in writing of the remittance. The lender must notify the borrower within 5 business days of receipt and provide the borrower with a copy of the Payment Notice generated by the SBA Paycheck Protection Program or SBA's final loan review decision, as applicable.



Additionally, the lender is expected to include with its notification to the borrower the following, depending on the circumstances:

If the lender issued a partial approval decision to the SBA (amount of lender's forgiveness decision was less than the forgiveness amount requested by the borrower) and SBA remits full amount approved by lender: Lender's notification to borrower must include the lender's decision, including the reasons the lender approve forgiveness in part but not in full. Lender's notification must not include that the borrower may appeal the lender's decision to OHA because the borrower has no such appeal right to OHA here.

If the SBA remits an amount different from the amount approved by the lender: Lender's notification to borrower must include a copy of the final SBA loan review decision, which will notify the borrower of tis rights to appeal the decision to OHA.

If SBA remits a forgiveness payment for the full amount of the PPP loan: Lender must notify the borrower within 5 business days of the remittance by SBA. Lender must also mark the borrower's note for the PPP as "Paid In Full" and include the note in the notification to the borrower. Although the note is marked "Paid In Full," the forgiven amount is considered cancelled indebtedness under Section 1106(c)(1) of the CARES Act.

TOP Offsets of Remittances to Lenders for Lender Debts

Forgiveness payment remittances by the SBA to lenders are subject to offset for delinquent debts registered with TOP that the lender owes to the United States, a State, the District of Columbia, Guam, the Virgin Islands, or Puerto Rico.

If a lender has a debt that is active for collection in TOP, any forgiveness payments remitted by the SBA to the lender will be offset until the lender's debt has been paid in full or otherwise resolved. If an SBA forgiveness payment is offset, in whole or in part, the lender must credit the borrower's PPP loan for the full amount of the funds that SBA approved for remittance to the lender (before offset). This is described in the Payment Notice generated by the SBA Paycheck Protection Platform or SBA's final loan review decision.

After the loan has been credited, the lender must report the remaining amount of the loan, if any, on the next SBA Form 1502 Report submitted by the lender for the PPP loan. Lenders that fail to timely and properly credit a borrower's PPP loan for the full amount of the funds that the SBA approved for remittance to the lender (before offset) will be subject to SBA action. Lenders can obtain further information about their debts in the TOP through the Treasury Department's website at <https://fiscal.treasury.gov/top/contact.html>.

Questions concerning this Notice may be directed to the Lender Relations Specialist in the local SBA Field Office. Local SBA Field Offices can be found at <https://www.sba.gov/tools/localassistance/districtoffices>.

ACTION PLAN

1. **Review this Procedural Notice in full.**
2. **Determine from a procedural and operational standpoint how these requirements for lender notification and remittances are going to impact your operations.**
3. **Prepare procedures and train relevant personnel of these requirements, particularly timing and content of the notices.**
4. **Contact Compliance Alliance with any additional questions.**