

Borrower/Lender Disagreements in PPP Loan Forgiveness Applications

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As we wrote [recently](#), the Paycheck Protection Program (“PPP”) was critical in helping small businesses stay afloat amidst the COVID-19 pandemic and resultant government restrictions on commerce. By now, most borrowers know that a crucial step in ensuring that they retain the benefits Congress intended is to submit a PPP loan forgiveness application. Unfortunately, in the process of applying for forgiveness, some borrowers have encountered difficulties when their lenders disagree that they are entitled to apply for forgiveness in the full amount of their PPP loans. In [2021](#), the United States Small Business Administration (“SBA”) provided a partial solution to this problem by creating the [PPP Direct Forgiveness Portal](#).

As the name suggests, the PPP Direct Forgiveness Portal allows borrowers to apply for PPP loan forgiveness directly through the SBA, without first going through their lenders. However, the PPP Direct Forgiveness Portal was not a complete fix. First, it only applies to loans of \$150,000.00 or less. Second, lenders still had to “opt in” to allow their borrowers to utilize the PPP Direct Forgiveness Portal at all. Some lenders chose not to do so, thus forcing their borrowers to continue applying for forgiveness through their lenders, even when the borrowers and lenders disagreed on the amount of forgiveness to which the borrowers are entitled. (The SBA has published a list of participating lenders [here](#).) And third, even when the PPP Direct Forgiveness Portal is utilized by a borrower, the lender still has to review the forgiveness application and provide its own forgiveness recommendation to the SBA.

More recently, the SBA issued [Procedural Notice 5000-827666](#) (the “Notice”) to further address the issue of borrower/lender disagreements in PPP loan forgiveness applications. According to the Notice, when a lender requires the borrower to apply for forgiveness in an amount less than the full amount of the loan, and the SBA issues a forgiveness payment following the lender’s partial approval decision, the lender must inform the borrower that the borrower has 30 days to seek, through the lender, an SBA loan review of the lender’s partial approval decision. If the borrower requests such a review, the lender must notify the SBA within 5 days of the borrower’s request. If, during the SBA’s review, it determines that the borrower is entitled to forgiveness in an amount greater than that for which the lender required the borrower to apply, the SBA will issue an additional forgiveness payment to make up the difference. Importantly, if the borrower has already begun

making payments on the PPP loan and the SBA loan review results in full forgiveness, the lender is required to refund all payments made by the borrower. The Notice also encourages lenders to work with their borrowers in order to amicably resolve any disputes over lenders' partial approval decisions.

While the Notice is a step in the right direction for borrowers, borrowers should be aware that it does not require the SBA to review a lender's partial approval decision. Once a borrower requests an SBA loan review according to the Notice, it is within the SBA's sole discretion to conduct the review or not. Additionally, even if the SBA agrees to review a lender's partial approval decision pursuant to a borrower's request, the borrower is required to continue making payments on the balance of the loan, and the loan is not deferred.

If you are a PPP borrower and your lender is forcing you to apply for forgiveness in an amount less than that to which you believe you are entitled, you should consider engaging an experienced attorney to help guide you through the forgiveness process and explore your options. An attorney can also help you interface with your lender in an attempt to resolve any disagreement related to the loan forgiveness amount, particularly if you have not been successful in getting your lender's attention on your own.

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