



SBA Procedural Notice

TO: All SBA Employees, 7(a) Lenders and Certified Development Companies

CONTROL NO.: 5000-20041

SUBJECT: Further Guidance on the Implementation of Section 1112 of the CARES Act, Subsidy for Certain Loan Payments, for the 7(a) Loan Program

EFFECTIVE: July 28, 2020

On April 16, 2020, SBA issued SBA Procedural Notice 5000-20020, “Implementation of Section 1112 of the CARES Act, Subsidy for Certain Loan Payments, for the 7(a) and 504 Loan Programs”, which sets forth the criteria and the procedures for carrying out Section 1112 with respect to the 7(a) and 504 Loan Programs. On April 29, 2020, SBA issued additional guidance in SBA Procedural Notice 5000-20023, “Additional Guidance on the Implementation of Section 1112 of the CARES Act, Subsidy for Certain Loan Payments, for the 7(a) and 504 Loan Programs”. The purpose of this notice is to provide further guidance on the implementation of Section 1112 for the 7(a) Loan Program.

A. 7(a) Lenders Risk Denial of Liability on SBA’s Guarantee if They Do Not Report Covered 7(a) Loans to SBA for Section 1112 Payments

Under Section 1112 of the CARES Act, SBA is required to make the loan payments that Borrowers owe on 7(a) loans in a regular servicing status, and the CARES Act provides that any payment made by SBA shall relieve the Borrower of the obligation to pay that amount. In SBA Procedural Notices 5000-20020 and 5000-20023 (collectively, the “Notices”), SBA set forth the procedures with which 7(a) Lenders are required to comply in order for SBA to implement Section 1112 of the CARES Act for the 7(a) Loan Program. In these Notices, SBA described the loan data and certifications that 7(a) Lenders are required to submit on a monthly basis through the CARES Act menu of the 1502 Dashboard on the SBA’s Fiscal Transfer Agent’s website (<https://colsonservices.bnymellon.com>) (the “Section 1112 monthly report”).

SBA advises Lenders that if they do not submit, as required, the Section 1112 monthly report for SBA to make the Section 1112 payments on behalf of a Borrower and, if the Borrower thereafter defaults on the 7(a) loan without having received the benefit of the Section 1112 payments, the Lender will be at risk of SBA denying liability on its guarantee in whole or in part. The Lender will be also referred to the Office of Credit Risk Management (OCRM) for failing to comply with the Notices.

B. SBA Reminds 7(a) Lenders that They Must Continue to Submit Regular SBA Form 1502 Reports for Each Loan and Remit Either the Ongoing Guaranty Fee or the Payments Owed to the Secondary Market

In section B.10 of SBA Procedural Notice 5000-20020, SBA stated that Lenders must continue to comply with existing procedures regarding 1502 loan reporting and payment remittance as required by SOP 50 10. The Section 1112 payments are made on behalf of the Borrower and, therefore, Lenders must handle these payments as if the Borrower made a regularly scheduled loan payment. Accordingly, SBA reminds 7(a) Lenders that they must continue to submit regular SBA Form 1502 Reports for each loan and remit either the ongoing guaranty fee or the payments owed to the secondary market.

C. For SBA purchased 7(a) Loans, SBA Reminds Lenders to Timely Remit SBA's Share of the Loan Payment

With respect to 7(a) loans that have been purchased by SBA and are serviced by Lenders, SBA stated in SBA Procedural Notice 5000-20023 that the amount of the Section 1112 payment that SBA will pay to the Lender “will be the same as if the Borrower were making the full payment directly to the Lender. The Lender must remit SBA's share of the payment no later than 30 calendar days from the date of receipt of the payment via an SBA Form 172 on U.S. Treasury's website (<https://www.pay.gov/public/form/start/3728021>.” SBA reminds Lenders that they must timely remit these payments to SBA or be at risk of SBA taking enforcement action against the Lender.

D. Maximum Number of Section 1112 Payments for Existing SBA Loans that are Refinanced with a 7(a) Loan

If an existing SBA Microloan, 504 debenture, or 7(a) loan has been receiving payments under Section 1112 of the CARES Act, and that loan is refinanced with a new 7(a) loan, the maximum amount that SBA will pay on these loans combined is a total of 6 months of payments. The Lender that refinanced the loan must ensure that it submits the Section 1112 monthly report for the correct number of remaining Section 1112 payments. For example, if SBA has made Section 1112 payments for two months on an existing 7(a) loan, and the Borrower refinances that loan with a new 7(a) loan, the new loan will only be eligible to receive four additional monthly payments under Section 1112. If more than the combined total of 6 months of payments are made for the loan, the Lender must immediately notify SBA and immediately return the excess payment(s). If any excess payments are discovered during a review by OCRM, a purchase review, or an audit, SBA will require the Lender to return the excess payments.

E. Section 1112 Payments for Partially Disbursed 7(a) Loans

A 7(a) term loan is not eligible for Section 1112 payments until it has been fully disbursed and moved into a regular servicing status. *See* SBA Procedural Notice 5000-20020, effective April 16, 2020. However, a loan may be partially disbursed and the Borrower may be required by the Lender to make payments on this partial disbursement. These payments may consist of interest only or principal and interest based on the current outstanding balance (“partial disbursement loan payments”).

If the partial disbursement loan payments are past due when the loan becomes eligible for Section 1112 payments, the Lender may request that these past due amounts be covered by Section 1112 when it submits the Section 1112 monthly report for this loan. The Lender would include these past due amounts in the total outstanding loan payment amount that the Lender provides in the Section 1112 monthly report. In addition, the months for which the Section 1112 payments are made for these past due amounts must be counted toward the 6-month period of Section 1112 payments. For example, if two months of partial disbursement loan payments are past due when the loan is first included in the Section 1112 monthly report, the Lender must include these two months in the number of monthly payments covered by the total outstanding loan payment amount. Lenders are reminded that, before they consider continuing to disburse a loan for which the Borrower is past due on partial disbursement loan payments, they must ensure that the issue of adverse change has been addressed in accordance with SBA Loan Program Requirements, including SBA Procedural Notice 5000-20011, Guidance Regarding No Adverse Change Certifications on 7(a) Loans during the COVID-19 Emergency, effective 3/26/20.

F. SBA Reminds Lenders that Loans Must be Fully Disbursed by September 27, 2020 to be Eligible for Section 1112 Payments

Lenders are reminded that a loan must be fully disbursed before it is eligible for Section 1112 payments, and that each loan must be fully disbursed by September 27, 2020 in order to be eligible for Section 1112 payments. SBA notes that September 27 falls on a Sunday, and Lenders are advised that if they are unable to fully disburse a loan during the weekend, the loan must be fully disbursed by Friday, September 25, 2020, in order to be eligible for Section 1112 payments.

G. When to Request Section 1112 Payments for Loans with Annual Payments

Under Section 1112(c) of the CARES Act, the 6-month period of payments begins “with the next payment due on the covered loan”. Accordingly, in paragraph B.5 of SBA Procedural Notice 5000-20023, SBA stated that, for a covered loan for which the Borrower makes loan payments less frequently than monthly, “SBA will make the loan payment beginning with the next payment due”. Thus, Lenders are reminded that, for loans for which the Borrower makes only one payment annually, the Lender must not request the Section 1112 payment for the loan before the annual payment is due. For example, if the annual payment due date is August 25, 2020, the Lender would include this loan for Section 1112 payment in its Section 1112 monthly report that is due by August 10. The amount that the Lender should report for payment in August is one-half of the annual loan payment. SBA will pay that amount in full and the Lender must not include that loan for Section 1112 payment for any other month. If an annual loan is prepaid in full before the annual payment due date, the loan is not eligible for any payments under Section 1112.

H. Lender Responsibilities When 7(a) Loans are Sold to Another 7(a) Lender

When a 7(a) Lender sells all of its interest in any of its 7(a) loans to another 7(a) Lender pursuant to 13 CFR 120.432(a), the purchasing lender is responsible for submitting, in accordance with SBA Procedural Notices 5000-20020 and 5000-20023, the Section 1112 monthly reports for the correct number of remaining Section 1112 payments. The selling and purchasing Lenders must

also ensure that, upon SBA's transfer of the loan account(s) into the purchasing Lender's portfolio, E-Tran reflects the purchasing Lender as the owner of the loan(s). If not, the Lenders must notify SBA at 7aPortfolioTransfers@sba.gov that E-Tran needs to be updated to reflect the purchasing Lender as the owner of the loan(s). SBA will then be able to make the Section 1112 payments to the correct Lender.

Questions

Questions on this Notice may be directed to the Lender Relations Specialists in the local SBA Field office. The local SBA Field office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

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