



# SBA Procedural Notice

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**TO:** All Paycheck Protection Program Lenders and SBA Employees

**CONTROL NO.:** 5000-835955

**SUBJECT:** Extension and Revision of SBA Guidance on Guaranty Purchases and Lender Servicing Responsibilities for PPP Loans

**EFFECTIVE:** October 5, 2022

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This Notice extends and revises the guidance provided in SBA Procedural Notice 5000-812316, “SBA Guaranty Purchases and Lender Servicing Responsibilities for PPP Loans” (“First PPP Guaranty Purchase Notice”). The Coronavirus Aid, Relief, and Economic Security (CARES) Act, as amended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act, the American Rescue Plan Act of 2021, and the PPP Extension Act of 2021, authorized SBA to guarantee loans under the Paycheck Protection Program (PPP) through June 30, 2021. PPP loans made under sections 7(a)(36) and (37) of the Small Business Act are referred to as “First Draw PPP Loans” and “Second Draw PPP Loans,” respectively. (Both are hereinafter referred to as “PPP loan” or “loan”.) Additionally, this Notice provides supplemental guidance to PPP Lenders (“Lenders”) on their servicing responsibilities and announces revisions to the guaranty purchase process for SBA to honor its guaranty.

## **What are a Lender’s Servicing Responsibilities for PPP loans?**

As outlined in the First PPP Guaranty Purchase Notice, PPP Lenders are responsible for servicing PPP loans. Lenders should work with the borrower to seek forgiveness at the end of the loan forgiveness covered period, collect loan payments if the borrower is required to make payments, or, in the event of a default or other qualifying event (as set forth in the promissory note, including business closure), to request guaranty purchase and charge off in accordance with the procedures discussed further below.

In addition to the Lender’s servicing responsibilities set forth in SBA Procedural Notice 5000-812316, SBA is providing supplemental servicing guidance, SBA is providing supplemental servicing guidance in response to questions from Lenders about servicing PPP loans that are not fully forgiven.

Lenders must work with borrowers that do not receive full forgiveness to allow for the repayment of the remaining balance of the loan, even if SBA has purchased the guaranty.

### **Can Lenders Extend the Maturity of a PPP Loan?**

Section 2 of the PPP Flexibility Act of 2020 (P.L. 116-142) (“Flexibility Act”) required a five-year maturity for PPP loans made on or after June 5, 2020. For PPP loans made before that date, the Flexibility Act allows Lenders and borrowers to mutually agree to extend the maturity of the PPP loan from two years to five years.

Additionally, as set forth in Chapter 7, Para. F.1. of SBA SOP 50 57 2 (effective date December 1, 2015), the maturity date of a 7(a) loan, which includes a PPP loan, may be extended for up to 10 years beyond its original maturity date, subject to mutual agreement by the Lender and borrower, if the extension is granted before the SBA loan guaranty expires and the extension will aid in the orderly repayment of the loan.

The First PPP Guaranty Purchase Notice advised Lenders that 13 CFR 120.524(a)(8) of SBA’s regulations provides that SBA will be released from liability on its guaranty if the Lender fails to request that SBA purchase the guaranty within 180 days after maturity of the PPP loan. SBA notes that 13 CFR 120.524(a)(8) further provides that if a Lender is conducting liquidation on a loan that has matured, SBA will be released from its guaranty only if the Lender fails to request that SBA purchase the guaranty within 180 days after completion of the liquidation. For PPP loans, SBA considers a pending Lender request to SBA for a forgiveness payment or a pending SBA loan review decision to fall within the conducting liquidation extension, since the Lender is waiting to receive funds from SBA to pay the PPP loan in full or in part.

Therefore, if a PPP loan matures (and the maturity is not extended) while a Lender request for a forgiveness payment or while a loan review decision is pending with SBA (including a borrower appeal pending with the Office of Hearing and Appeals (OHA), if applicable), the Lender will have 180 days from the date of the SBA forgiveness payment or final SBA loan review decision (or OHA final decision, if applicable) to request that the SBA honor the guaranty. In these cases, the PPP loan guaranty will be automatically terminated if the Lender does not extend the maturity of the PPP loan (and update Etran with the revised maturity date) or submit to SBA a demand to purchase the guaranty within 180 days from the date of the SBA forgiveness payment or final SBA loan review decision (or OHA final decision, if applicable).

### **May Lenders require collateral or personal guaranties when extending the maturity of a PPP loan or making other loan modifications?**

No. Section 7(a)(36)(J) of the Small Business Act provides that for PPP loans “(i) no personal guarantee shall be required for the covered loan; and (ii) no collateral shall be required for the covered loan.” Therefore, Lenders must not take any collateral or require any personal guaranty when extending the maturity of a PPP loan or making other loan modifications.

## **Can Lenders modify the PPP Loan's interest rate?**

No. The first PPP interim final rule published on April 15, 2020 (85 FR 20811) provides that the interest rate for PPP loans is 100 basis points or one percent. Lenders may not charge an interest rate higher than one percent on a PPP loan. Therefore, Lenders are not permitted to charge a default interest rate on PPP loans. Further, Lenders are not permitted to charge a separate servicing fee on PPP loans.

## **What are Loan Monitoring requirements for PPP Loans?**

Lenders should take reasonable steps to monitor borrowers that remain in repayment status to ensure that the businesses continue in operation and make payments on their loans. Lenders are not required to obtain updated financial information annually, or at any other interval, because repayment analysis was not required when the PPP loan was made.

## **What are the Circumstances Under Which a Lender May Request Guaranty Purchase?**

As outlined in the First PPP Guaranty Purchase Notice, a Lender may request guaranty purchase from SBA under specific circumstances.

A Lender may simultaneously request a guaranty purchase and charge-off from SBA when the borrower:

- Is 60 days or more past due on scheduled loan payments and the default has not been cured;
- Is permanently closed and does not plan to submit a forgiveness application;
- Has filed for Chapter 7 bankruptcy protection;
- Has filed for Chapter 11, 12, or 13 bankruptcy once a period of at least 60 days has elapsed from the end of the PPP loan deferment period or any time after an order is entered confirming a plan if the plan does not provide for payment of 100% of the underlying debt; or
- In the case of self-employed individuals, sole proprietors, single-member LLCs, or independent contractors, the owner is deceased.

A Lender may request guaranty purchase (without charge-off) from SBA when:

- The borrower or any owner of 20% or more of the borrower, has been indicted for or convicted of a felony related to the PPP loan; or
- The borrower has filed an appeal of a final SBA loan review decision with OHA in accordance with PPP Loan Program Requirements. Lender may request guaranty purchase 60 days after the borrower has filed its appeal with OHA.

In addition to the previously identified circumstances, a Lender may request guaranty purchase (without charge-off) of a PPP loan if:

- The Lender has filed a Suspicious Activity Report (SAR) with respect to the PPP loan; and
- A Lender request for forgiveness payment or an SBA loan review has been pending with SBA for more than 12 months. In this circumstance, the lender should contact SBA through the Platform Inbox to coordinate submission of the guaranty purchase request. If SBA purchases the guaranty while a Lender request for a forgiveness payment or an SBA loan review decision has been pending with SBA for more than 12 months and SBA determines that the borrower is eligible for loan forgiveness in any amount, SBA will not remit a forgiveness payment to the Lender. Instead, the SBA-approved forgiveness amount will be applied to reduce the outstanding amount of the loan owed by the borrower.

Lenders are encouraged to work with borrowers to process forgiveness applications before requesting guaranty purchase. If the Lender receives a forgiveness application from the borrower after requesting guaranty purchase, the Lender must submit its forgiveness decision to SBA in accordance with PPP Loan Program Requirements.

### **Can a PPP Borrower make payments after SBA has purchased the guaranty and Charged Off the PPP Loan?**

Yes. Lenders are reminded that they have unilateral authority to negotiate with borrowers to enter into a workout agreement for repayment of the outstanding balance of a PPP loan, regardless of whether the guaranty has been purchased.

If the Lender receives any post-guaranty purchase payments from the borrower, the Lender must send the full payments to SBA via Pay.Gov (<https://www.pay.gov/>) using the payment code 172. When submitting the payment, Lenders should select “Paycheck Protection Program (PPP)” from the four choices listed under the Type of Payment. This will allow for 100% of the payment to be remitted to SBA and applied to the loan.

### **Questions:**

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

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