SBA Procedural Notice

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

CONTROL NO.: 5000-20023

SUBJECT: 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

EFFECTIVE: April 29, 2020

On April 16, 2020, SBA issued 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. The purpose of this notice is to provide additional guidance on the implementation of section 1112 for the 7(a) and 504 Loan Programs.

A. 7(a) Loans for which SBA Purchased the Guaranty and which are Serviced by Lenders

In section B.2 of Procedural Notice 5000-20020, SBA stated that it would provide guidance in a later notice on the procedures for submitting information with respect to 7(a) loans for which SBA has purchased the guaranty and which are serviced by Lenders. For these loans, Lenders must comply with the procedures described below:

1. Lenders must submit the information and make the entries and certifications described in paragraphs a. through d. below through the CARES Act menu of the 1502 Dashboard on the FTA's website (https://colsonservices.bnymellon.com). Lenders will have the option to perform loan level data entry or upload portfolio information utilizing the Section 1112 Excel template available in the Downloads section of the FTA's website. Lenders must submit:

    a. the month in which SBA should begin making the section 1112 payments to Lenders. For loans in deferment, the first month for the section 1112 payment is the month after the deferment period ends;

    b. the total outstanding loan payment amount that is due and the number of monthly payments that are included in the total outstanding loan payment amount. For example, for the loan information submitted in May, Lenders should enter "2" if requesting payments for April and May. The value will be greater if Lender is also

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requesting eligible past due months. The amount must include both the guaranteed portion that was purchased by SBA and the non-guaranteed portion of the 7(a) loan;

c. the ACH credit instructions for making the payment directly to the Lenders (SBA will not make the payments to any Lender Service Providers); and

d. a certification that:

i. all of the loan information that is being submitted to SBA through the CARES Act menu of the 1502 Dashboard is true and correct;

ii. each loan is in regular servicing status in accordance with SBA Loan Program Requirements;

iii. no loan is in liquidation status, or should have been moved pursuant to SBA Loan Program Requirements from "regular servicing" into "liquidation" status prior to the first payment due date covered by section 1112; and

iv. the information is being submitted by an authorized employee or agent of Lender acting within the scope of Lender's authority and Lender acknowledges responsibility for all entries and certifications made on its behalf.

2. For loans with payments due in both April and May 2020, the Lender must submit the loan information described in paragraph 1 above for both months no later than May 11th and SBA will make the payments for both months by May 25th. If the Lender receives a regular monthly payment from the Borrower to cover the payments due in April and/or May 2020, the Lender must inform the Borrower that it has the option of the Lender either returning the loan payment(s) to the Borrower or applying the loan payment(s) to further reduce the loan balance after application of SBA's payment(s). If the Borrower's payment is used to further reduce the loan balance, Lender must remit SBA's share of the payment to SBA in accordance with SBA Loan Program Requirements.

3. For each subsequent month, the Lender must submit the loan information described in paragraph 1 above no later than the 10th day of each month or the next business day, and SBA will make the monthly payment by the 25th day of each month.

4. The amount 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.

5. Loans on deferment must follow the procedures set forth in section B.3 of SBA Procedural Notice 5000-20020.

B. Clarifications relating to Process for 7(a) Loans for which SBA has Not Purchased the Guarantee

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SBA is amending section B.2. of Procedural Notice 5000-20020 to: (1) clarify in the introductory text that the Excel template for uploading portfolio information is available in the Downloads section of the FTA's website; (2) clarify in section B.2.b that Lenders must indicate the number of monthly payments that are included in the total outstanding loan payment amount; and (3) revise the certifications in section B.2.d that Lenders must make each month upon submitting the loan information that is required for payment:

"2. For 7(a) loans for which SBA has not purchased the guarantee, Lenders must submit the information described in a. through d. below through the CARES Act menu of the 1502 Dashboard on the FTA's website (https://colsonservices.bnymellon.com). Lenders will have the option to perform loan level data entry or upload portfolio information utilizing the Section 1112 Excel template available in the Downloads section of the FTA's website. Lenders must submit:

a. the month in which SBA should begin making the section 1112 payments to Lenders. For loans in deferment, the first month for the section 1112 payment is the month after the deferment period ends;

b. the total outstanding loan payment amount that is due and the number of monthly payments that are included in the total outstanding loan payment amount. For example, for the loan information submitted in May, Lenders should enter "2" if requesting payments for April and May. The value will be greater if Lender is also requesting eligible past due months. The amount must include both the guaranteed and non-guaranteed portions of the 7(a) loan;

c. the ACH credit instructions for making the payment directly to the Lenders (SBA will not make the payments to any Lender Service Providers); and

d. a certification that:

i. all of the loan information that is being submitted to SBA through the CARES Act menu of the 1502 Dashboard is true and correct;

ii. each loan is in regular servicing status in accordance with SBA Loan Program Requirements;

iii. no loan is in liquidation status, or should have been moved pursuant to SBA Loan Program Requirements from "regular servicing" into "liquidation" status prior to the first payment due date covered by section 1112; and

iv. the information is being submitted by an authorized employee or agent of Lender acting within the scope of Lender's authority and Lender acknowledges responsibility for all entries and certifications made on its behalf."

C. Lender's Responsibility for Information Submitted and Certifications Made by Its Authorized Agent

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Some 7(a) Lenders use an Agent or a Lender Service Provider (LSP) (as those terms are defined in 13 CFR 103.1) to assist in performing certain lender functions on behalf of the Lender. By authorizing an Agent or LSP to submit the information and make the entries and certifications required under section A.1 of this Notice, or under section B.2 of Procedural Notice 5000-20020, on the Lender's behalf, the Lender is acknowledging that the Agent or LSP is acting within the scope of Lender's authority and the Lender is acknowledging responsibility for all information submitted and entries and certifications made on its behalf.

D. CCD+ addenda string

SBA will make the payments to 7(a) Lenders using the DDA ACH information supplied by Lenders. SBA will make a payment for each loan on an individual basis so that Lenders will be able to match the received payment with the corresponding loan. Each disbursement will include an ACH addenda record using the structured layout that is shown in the table that is available in the Downloads section of the FTA's website. This table includes payment details that Lenders can use for automating the posting of these payments to the Lender's record system. For Lenders unable to automate the posting of these payments, the record layout should be referenced to determine what the payment is for when posting the payment manually.

E. Payment Posting Instructions

With respect to the 7(a) Loan Program, the instructions for posting section 1112 payments are as follows:

1. With respect to the section 1112 payment that covers a regular monthly loan payment due on or after March 27, 2020, Lenders may post the payment either:

    a. as of the loan's payment due date; or

    b. on the date that the section 1112 payment is received from SBA, if different than paragraph 1.a.

2. If the Lender posts the section 1112 payment in accordance with paragraph 1.b. above, the Lender may not charge any late fees.

3. If the payment made by SBA covers any past due monthly loan payments, the Lender may post the payment for those amounts either:

    a. on the date that the SBA payment is received; or

    b. on the date that the Lender uses under paragraph 1.a above to post the payment made for a regular monthly loan payment that was due on or after March 27, 2020.

F. Loan Information Submitted by Lenders After the Monthly Deadline

If a 7(a) Lender submits the information required for SBA's first monthly loan payment after the April 22 deadline set forth in section B.1.a.ii of Procedural Notice 5000-20020, SBA will

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make the payments for these loans by May 25, 2020. For subsequent months, if a Lender misses the deadline for submitting the loan information that is required under section A.1 above, or under section B.2 in Procedural Notice 5000-20020, which is the 10th day of the month or the next business day, SBA will make the payments for these loans by the 25th day of the following month.

G. Clarification Regarding Loans with Catch-Up Plans or Other Settlements

Section B.11 of Procedural Notice 5000-20020 provides that, with respect to any loan for which the Borrower is required to make payments under a catch-up plan or other settlement, Borrowers continue to be obligated to make these payments in accordance with the catch-up plan or settlement during the six-month period of SBA payments. Section B.11 further states that "no payments that SBA makes under section 1112 of the CARES Act may be used to cover payments owed by the Borrower under the catch-up plan or settlement". With respect to this latter phrase, SBA wishes to clarify that SBA intends to exclude from the section 1112 payment only that portion of the loan payment that is attributable to the amount that the Borrower owes under the catch-up plan or settlement and that is over and above the regular payment of principal and interest (and any associated fees) on the loan. SBA will cover the regular payment owed on the loan that is not related to the catch-up plan or settlement.

H. If Borrower Makes Additional Payments During 6-Month Period of SBA Payments

Section B.9 of Procedural Notice 5000-20020 is revised to read as follows:

"7(a) Loans

If a 7(a) Lender receives any regular loan payment from a Borrower, in whole or in part, during the 6-month period that SBA is making the loan payments, the Lender must inform the Borrower that it has the option of the Lender either returning the loan payment to the Borrower or applying the loan payment to further reduce the loan balance after application of SBA's payment provided that the Lender complies with SBA Loan Program Requirements applicable to prepayments (*i.e.*, the requirements in 13 CFR 120.223 related to the subsidy recoupment fee or, for loans sold in the secondary market, the requirements related to prepayments of greater than twenty percent (20%) of the principal amount outstanding at the time of prepayment.)

504 Loans

In the 504 Loan Program, Borrowers may not make any partial prepayments on a 504 loan for which the debenture has not been purchased. Accordingly, if a 504 Borrower makes any regular monthly loan payments, in whole or in part, during the 6-month period that SBA is making the loan payments on a 504 loan for which the debenture has not been purchased, the payment must be returned to the Borrower unless the payment is being made to cover any past due amounts. If the Borrower makes any regular monthly loan payments, in whole or in part, during the 6-month period that SBA is making the loan payments on a 504 loan for which the debenture has been purchased, the Lender must inform the Borrower that it has the

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option of the Lender either returning the loan payment to the Borrower or applying the loan payment to further reduce the loan balance after application of SBA's payment."

I. Additional Guidance on Revolving Lines of Credit

In section B.6 of Procedural Notice 5000-20020, SBA stated that "[f]or revolving lines of credit with outstanding balances, SBA will make the loan payments for the 6-month period in accordance with the payment terms stated in the loan authorization." A Borrower does not need to maintain a continuous outstanding balance in the revolving line of credit for a 6-month period in order to be eligible for the section 1112 payments, so long as the first draw on the line of credit is made on or before September 27, 2020. For example, the Borrower may have an outstanding balance for two months, a zero balance for two months, and then draw down again on the line of credit and have an outstanding balance for four additional months, and SBA would make the payments for the 6 months during which the Borrower had an outstanding balance. SBA will pay no more than 6 months of payments on the same revolving line of credit, and these payments do not need to be made for 6 consecutive months. No section 1112 payments will be made on the outstanding balance of a revolving line of credit after September 30, 2021.

J. Payments for SBA-Purchased Debentures of 504 Loans in Regular Servicing

For SBA-purchased debentures of 504 loans that are in regular servicing status, SBA will credit the loan with the section 1112 payment starting with the Next Installment Due Date.

K. Deferments and Catch-up Plans for 504 Loans that are Funded with the April, May and June 2020 Debenture Sales and are Covered by a COVID-19 Agreement

To efficiently handle the large volume of loans that are closed each month, the CSA received guidance from SBA to initially apply a 90 day deferment to the 504 loans that are granted deferments under the COVID-19 Substantial Adverse Change Remedy Certification and Agreement (COVID-19 Agreement). At least one month before the end of the 90 day deferment, the CDC must consult with the Borrower on whether the Borrower wishes to extend the deferment period up to an additional 90 days and inform the CSA of the Borrower's decision.

In addition, to efficiently handle the large volume of loans that are closed each month, SBA instructed the CSA to initially default the 504 loans that are granted deferments under the COVID-19 Agreement to a 5-year catch-up plan. For these loans, the CDC must contact the CSA at least one month before the end of the deferment period to coordinate the development of the catch up plan. The CDC must contact the Borrower before the deferment period ends to determine the length and the other terms of the catch-up plan.

L. Clarification Regarding New Loans Made After March 27, 2020

In section B.4 of Procedural Notice 5000-20020, SBA stated that "[f]or a covered loan made beginning on March 27, 2020 and through September 27, 2020, SBA will make the loan payments for the 6-month period beginning with the first payment due on the covered loan."

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SBA wishes to clarify that these new loans include loans that were in "approval" status before March 27, 2020 and then moved into "regular servicing" status on or after March 27, 2020. To be eligible for the section 1112 payments, these loans would need to be moved into "regular servicing" status no later than September 27, 2020.

M. Availability of Funds for Section 1112 Payments

Under section 1107 of the CARES Act, the funds appropriated for carrying out section 1112 of the CARES Act remain available until September 30, 2021. Accordingly, for a Borrower to be eligible for all six months of payments under section 1112, any period of deferment that was granted prior to the payments beginning must end by March 30, 2021 for the section 1112 funds to be available for 6 months of payments, with the last of the six months of payments made on or before September 30, 2021. Loans with a deferment period that ends after March 30, 2021 would be eligible for section 1112 payments only through September 30, 2021 (if the loan is otherwise eligible for section 1112 payments).

N. Reconciliation of Payments to Lenders

1. Instructions for Lender reconciliation and returned payments

If the Lender determines that any loan payment amount that it submitted through the CARES Act menu of the 1502 Dashboard for which it received payment is incorrect then the Lender can adjust the loan payment amount in a subsequent month to account for the difference. The subsequent month's section 1112 loan payment would be increased to cover the amount of the underpayment or decreased to credit the amount of the overpayment from a previous month. Lenders must maintain a written explanation of the circumstances justifying the correction in their loan files, which SBA may request at any time. If the Lender received an underpayment for the 6th and final section 1112 payment, then the Lender may submit a 7th request the following month through the CARES Act menu of the 1502 Dashboard for the additional funds owed the Lender only after providing a written request to the FTA, Colson Services. If the Lender received an overpayment for the 6th and final section 1112 payment, or if the Lender received payments on a loan that was not eligible for section 1112 payments, then the additional funds owed the SBA must be immediately returned to SBA via wire to Colson's 7(a) Collection Account with a reference to Section 1112 and the affected SBA Loan Number.

2. SBA Reconciliations/Audits.

SBA, or SBA's agent, may perform subsequent reconciliations of the payments made under section 1112. When requested, Lenders must provide loan transcripts for the loans for which section 1112 payments were made within 10 business days of the request from SBA or its agent. One or more reconciliations and/or audits of payments may be performed by SBA at purchase, at the end of the loan term, and/or during the term of the loan.

3. Adjustments Allowed on Payments to Lenders.

If the reconciliation or audit shows an overpayment, the Lender will pay SBA any amounts due to SBA as a result of any reconciliation or audit performed, and SBA may net the amount due from future payments or guaranty purchase amounts due to the Lender. If the reconciliation or audit shows an underpayment, SBA will pay any amount due the Lender as a result of the reconciliation or audit.

For new 7(a) loans made between March 27, 2020 and September 27, 2020, if the SBA guarantee is cancelled after the loan is made due to character ineligibility, financial information verification issues, or for any other reason, any payments disbursed to the Lender prior to such cancellation must be promptly repaid to SBA.

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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