



SBA Procedural Notice

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

CONTROL NO.: 5000-20079

SUBJECT: Guidance on the Implementation of the Extension of the Section 1112 Debt Relief Program for the 7(a) and 504 Loan Programs, as Authorized by Section 325 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

EFFECTIVE: January 19, 2021

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), Pub. L. 116-136, was enacted to provide emergency and immediate national economic relief and assistance across the American economy, including to small businesses, workers, families, and the health-care system, to alleviate the severe economic hardships and public health threat created by the 2019 Novel Coronavirus pandemic. Section 1112 of the CARES Act, as set forth in Pub. L. 116-136, authorizes SBA to pay, for a 6-month period, the principal, interest, and associated fees that Borrowers owe on covered 7(a) loans, 504 loans, and Microloans (hereafter “First Round Section 1112 Payments”).

Under Section 325 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted December 27, 2020, Pub. L. 116-260, Congress has amended section 1112 to authorize a second round of Section 1112 payments (hereafter referred to as “Second Round Section 1112 Payments”), which will cover the principal, interest, and associated fees that Borrowers owe on covered loans for the periods described below in Section III.B, subject to the availability of funds. In addition, Section 325 of the Economic Aid Act expands the eligibility of covered loans for First Round Section 1112 Payments, as described below in Section II.A, subject to the availability of funds.

The purpose of this Notice is to provide guidance on the implementation of Section 1112 of the CARES Act, as amended by Section 325 of the Economic Aid Act, and the Second Round Section 1112 Payments that are authorized for the 7(a), 504, and Microloan Programs.

I. Availability of Funds for All Section 1112 Payments

Under section 323(d)(1)(G) of the Economic Aid Act, Congress appropriated \$3,500,000,000 for carrying out section 325 of the Economic Aid Act and these funds remain available until

expended. Under Section 1112(c)(7) of the CARES Act, SBA will monitor whether this amount is sufficient to make the payments for the periods authorized by Section 1112(c), as amended. If SBA determines that the amount is insufficient, SBA will, in accordance with Section 1112(c)(7), develop and submit to Congress a plan to proportionally reduce the number of months provided for each authorized period described in Sections II.A and III.B below, while ensuring that all amounts made available to make Section 1112 payments are fully expended. The number of months of section 1112 payments described in Sections II.A and III.B of this Notice are subject to adjustment based on the availability of funds.

II. First Round Section 1112 Payments

A. Implementation of the Expanded Eligibility of Covered Loans for First Round Section 1112 Payments

Covered loans that were approved on or before September 27, 2020 are now eligible for First Round Section 1112 Payments, even if the loan was not fully disbursed on or before September 27, 2020. Under Section 1112 of the CARES Act, as originally enacted, SBA required that, to be eligible for the 6-month period of Section 1112 payments, the covered loan had to be moved into a regular servicing status (*i.e.*, fully disbursed) by September 27, 2020 (or, for Community Advantage Recovery Loans (CARL loans), by October 1, 2020). For example, a loan that was approved on or before September 27, 2020, but not fully disbursed until after September 27, 2020 (after October 1 for CARL Loans), would have been deemed ineligible for the First Round Section 1112 Payments.

Section 325(a) of the Economic Aid Act amends Section 1112(c) of the CARES Act by requiring that the loan's eligibility for Section 1112 payments be based on the date on which the loan was approved by SBA, not the date on which the loan was fully disbursed. Under Section 325(b) of the Economic Aid Act, this amendment is effective "as if included in the CARES Act (Public Law 116-136; 134 Stat. 281)". Accordingly, any covered loan that was approved on or before September 27, 2020 is eligible for the First Round Section 1112 Payments, even if it was not fully disbursed by that date, and will begin to receive the payments with the first payment due after the loan is fully disbursed.¹

SBA issues the following guidance for making the First Round Section 1112 Payments for loans approved on or before September 27, 2020 and fully disbursed on or after September 28, 2020 ("Newly Eligible First Round Loans"):

1. For 7(a) Loans:

a. Lenders Must Identify Newly Eligible First Round Loans:

i. Lenders must identify the 7(a) loans in their portfolio that were approved on or before September 27, 2020 but not fully disbursed by that date. (For CARL loans, Lenders

¹ See Section-by-Section summary of the bill released by the U.S. Senate Committee on Small Business and Entrepreneurship on December 21, 2020 (Section 1112 payments "should be made only once the loan is fully disbursed").

must identify the loans approved on or before September 27, 2020 but not fully disbursed by October 1, 2020.) If and when that loan is fully disbursed, and if the loan is in a regular servicing status, the loan is eligible to receive Section 1112 payments for a 6-month period beginning with the next payment due or, if the loan is on deferment, beginning with the first month after the deferment period. *See* paragraph C.1 of SBA Procedural Notice 5000-20020 for further information on the procedures related to deferments that apply to loans receiving the First Round Section 1112 Payments.

- ii. Lenders must determine if any of the loans identified in paragraph 1.a.i above were fully disbursed between September 28, 2020 and the effective date of this Notice and, if so, if the loan is currently in a regular servicing status. If the loan satisfies both criteria, the Lender should report these Newly Eligible First Round Loans for payment in its Monthly Section 1112 Report as soon as possible and no later than with the Monthly Section 1112 Report due by March 8, 2021.
- iii. If the loan has not yet been fully disbursed as of the date of this Notice, the Lender must wait until after the loan is fully disbursed to begin to request the First Round Section 1112 Payments. Lenders must continue to monitor when a 7(a) loan that was approved on or before September 27, 2020 is fully disbursed. After the loan is fully disbursed and moved into a regular servicing status, the Lender must include this Newly Eligible First Round Loan for payment in its Monthly Section 1112 Report beginning with the month in which the first payment is due.

b. Payment Process for Newly Eligible First Round Loans

- i. SBA will make the payments for the Newly Eligible First Round Loans based on the information that Lenders are required to submit each month through the CARES Act menu of the 1502 Dashboard on the Fiscal Transfer Agent's (FTA) website (<https://colsonservices.bnymellon.com>) ("Monthly Section 1112 Report"). *See* paragraphs A.1 and B of SBA Procedural Notice 5000-20023. In submitting these loans for payment, Lenders must comply with the criteria and procedures set forth in the prior Notices that SBA issued for the First Round Section 1112 Payments ("First Round Notices", listed in Section II.B below), except as otherwise revised by this Notice.
- ii. To comply with the requirement set forth in Section 1112(c)(8)(B) that SBA make the Section 1112 payments by the 15th day of the month, SBA is hereby revising the First Round Notices to require that Lenders submit the Monthly Section 1112 Report for the Newly Eligible First Round Loans no later than the 7th day of each month, or the next business day (instead of by the 10th day of each month or the next business day).
- iii. Lenders must apply the First Round Section 1112 Payments for the Newly Eligible First Round Loans beginning with the next payment due.

EXAMPLES: If a loan on a monthly payment schedule was approved on August 31, 2020, and fully disbursed on October 20, 2020, the loan is now eligible for the First Round Section 1112 Payments and the following procedures would apply:

Example A: If the Borrower made the loan payments for November and December 2020 and January 2021, SBA would make the Section 1112 payments for a 6-month period beginning with the next monthly loan payment due in February 2021. With its February Monthly Section 1112 Report, Lender would submit the information needed for SBA to make the loan payment for one month (February), and then submit the information necessary for making the payments in each of the five subsequent months.

Example B: If the loan payments for November and December 2020 and January 2021 are past due, SBA would make the Section 1112 payments for a 6-month period beginning with the amounts past due for November, December and January. With its February Monthly Section 1112 Report, Lender would submit the information needed for SBA to make the loan payments for four months (November through February). The Lender would then submit the loan information necessary for making the payments in each of the two subsequent months (March and April).

- iv. The First Round Section 1112 Payments must be completed before a Newly Eligible First Round Loan may receive any Second Round Section 1112 Payments, as described in Section III below.

2. For 504 loans:

- a. SBA's Central Servicing Agent (CSA) will review SBA's 504 portfolio and identify the 504 loans that were approved on or before September 27, 2020 and funded on or after September 28, 2020. If the loan was funded on or after September 28, 2020, and the loan is in a regular servicing status, the loan is eligible to receive Section 1112 payments for a 6-month period beginning with the next payment due or, if the loan is on deferment, beginning with the first month after the deferment period. SBA will make the payments by the 15th day of the month.
- b. The CSA will process the Section 1112 payments for Newly Eligible First Round Loans in accordance with the First Round Notices listed in Section I.B below, except as otherwise revised by this Notice.
- c. The First Round Section 1112 Payments must be completed before the loan may receive any Second Round Section 1112 Payments, as described under Section III below.

B. Continued Applicability of Prior SBA Notices to All First Round Section 1112 Payments

SBA issued several Notices providing guidance on the implementation of the First Round Section 1112 Payments and, except as revised below and by Section II.A of this Notice, Lenders must continue to follow the guidance in these prior Notices with respect to any First Round Section 1112 Payment:

- 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, effective April 16, 2020.

With respect to 7(a) loans that are not purchased by SBA, Paragraphs B.1.b, B.3 and B.4 of the above Notice are hereby revised to provide that 7(a) Lenders are required to submit the Monthly Section 1112 Report by the 7th day of each month or the next business day, and that SBA will make that month's payment by the 15th day of each month.

In addition, with respect to any First Round Section 1112 Payment, the above Notice is hereby revised by adding a new paragraph B.12 to read as follows: "In accordance with Section 1112(c)(8)(A) of the CARES Act, no Lender may charge a late fee to a Borrower with respect to a covered loan during any period in which SBA is making Section 1112 payments with respect to the loan."

- 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, effective April 29, 2020.

With respect to 7(a) loans that have been purchased by SBA, Paragraph A.3 of the above Notice is hereby revised to provide that 7(a) Lenders are required to submit the Monthly Section 1112 Report by the 7th day of each month or the next business day, and that SBA will make that month's payment by the 15th day of each month.

- SBA Procedural Notice 5000-20041, "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.
- SBA Procedural Notice 5000-20049, "Further 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 September 24, 2020.
- SBA Procedural Notice 5000-20058, "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 October 21, 2020.

III. Second Round Section 1112 Payments

A. **Definitions.** For the purposes of implementing the Second Round Section 1112 Payments, the terms below have the following meaning:

1. A "**covered loan**" means a loan that is guaranteed by SBA (or for the 504 Loan Program, a loan that is funded by a debenture that is guaranteed by SBA) under:
 - a. Section 7(a) of the Small Business Act (15 U.S.C. 636(a)), including a loan made under the Community Advantage Pilot Program. A "covered loan" excludes a loan made under

paragraph (36) of such section 7(a), as added by section 1102 of the CARES Act (the Paycheck Protection Program); or

b. title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.) (the 504 Loan Program).

2. A loan in “**regular servicing status**”:

a. Includes any loan that has been moved from “approval” status (governed by SOP 50 10) to “regular servicing” status, which occurs when the loan has been closed and the final loan disbursement has been made (revolving lines of credit are considered fully disbursed when the loan has been closed and the initial loan disbursement has been made);

b. Does not include any loan that has been moved from “regular servicing” into “liquidation” status, or any loan that should have been moved pursuant to SBA Loan Program Requirements from “regular servicing” into “liquidation” status prior to the first or next payment due date covered by Section 1112. If the Lender receives a payment under Section 1112 for a loan that the Lender failed to move into liquidation status as required by SBA Loan Program Requirements, the Lender must immediately notify SBA that it has placed the loan in liquidation status and immediately return the payment. A Borrower that is granted a deferment before the payments begin under Section 1112 will not be removed from regular servicing status for failing to make any payments required by a catch-up plan; and

c. generally, should not include any loan that is more than 120 days past due (as counted back from the first payment due date covered under section 1112).

3. “**Lender**” means either a 7(a) Lender or a Certified Development Company (CDC).

4. “**Borrower**” means the obligor of a 7(a) or a 504 Loan.

5. “**Associated fees**” means the fees paid by the Borrower on a monthly basis including:

a. For 504, the CSA fee, the CDC servicing fee, and the annual SBA guarantee fee paid on a monthly basis by the Borrower.

b. For 7(a), the extraordinary servicing fee authorized by 13 CFR 120.221(b).

B. Scheduling of Second Round Section 1112 Payments.

SBA will make Second Round Section 1112 Payments for a covered loan that is in a regular servicing status for the periods described below:

1. For 504 Loans and 7(a) Loans (except for loans made under the Community Advantage Pilot Program):

a. For a loan that was approved before March 27, 2020 and is not on deferment, SBA will make the Second Round Section 1112 Payments as follows:

- i. For a 3-month period beginning with the first payment due on the loan on or after February 1, 2021. For any loan that is continuing to receive the First Round Section 1112 Payments on or after February 1, 2021, this 3-month period for the Second Round Section 1112 Payments does not begin until the first month after SBA has completed the First Round Section 1112 Payments; and
 - ii. For an additional 5-month period immediately following the end of the 3-month period for a Borrower that, according to the records of SBA, is assigned a North American Industry Classification System code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812.
- b. For a loan that was approved before March 27, 2020 and is on deferment, SBA will make the Second Round Section 1112 Payments as follows:
- i. For a 3-month period (beginning on or after February 1, 2021) beginning with the later of:
 - (a) the next payment due on the covered loan after the deferment period; or
 - (b) the first month after SBA has completed the First Round Section 1112 Payments.
 - ii. For an additional 5-month period immediately following the end of the 3-month period for a Borrower that, according to the records of SBA, is assigned a North American Industry Classification System code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812.
- c. For a loan approved during the period beginning on February 1, 2021 and ending on September 30, 2021, for the 6-month period beginning with the first payment due on the loan after the loan has been moved into a regular servicing status.
- d. For a loan approved during the period beginning on March 27, 2020 and ending on September 27, 2020, SBA may make Second Round Section 1112 Payments if SBA determines that there are sufficient funds.
- e. A loan approved during the period beginning on September 28, 2020 and ending on January 31, 2021 is not eligible to receive Second Round Section 1112 Payments under Section 1112 of the CARES Act, as amended by Section 325 of the Economic Aid Act. Lenders are prohibited from cancelling a loan approved during this period and resubmitting a loan for a similar purpose on or after February 1, 2021 in order to obtain Section 1112 payments for the Borrower. Lenders are also prohibited from refinancing a loan on or after February 1, 2021 that was approved beginning on September 28, 2020 and ending on January 31, 2021 in order to obtain Section 1112 payments for the Borrower.

2. For 7(a) Community Advantage Loans:

- a. For a loan that was approved before March 27, 2020 and not on deferment, SBA will make the Second Round Section 1112 Payments for an 8-month period beginning with the first payment due on the loan on or after February 1, 2021. For any loan that is continuing to

receive the First Round Section 1112 Payments on or after February 1, 2021, this 8-month period for the Second Round Section 1112 Payments does not begin until the first month after SBA has completed the First Round Section 1112 Payment.

- b. For a loan that was approved before March 27, 2020 and is on deferment, SBA will make the Second Round Section 1112 Payments for an 8-month period (beginning on or after February 1, 2021) beginning with the later of:
 - i. The next payment due on the covered loan after the deferment period; or
 - ii. The first month after SBA has completed the First Round Section 1112 Payments.
- c. For a loan approved during the period beginning on February 1, 2021 and ending on September 30, 2021, for the 6-month period beginning with the first payment due on the loan after the loan has been moved into a regular servicing status.
- d. For a loan approved during the period beginning on March 27, 2020 and ending on September 27, 2020, SBA may make Second Round Section 1112 Payments if SBA determines that there are sufficient funds.
- e. A loan approved during the period beginning on September 28, 2020 and ending on January 31, 2021 is not eligible to receive Second Round Section 1112 Payments under Section 1112 of the CARES Act, as amended by Section 325 of the Economic Aid Act. Lenders are prohibited from cancelling a loan approved during this period and resubmitting a loan for a similar purpose on or after February 1, 2021 in order to obtain Section 1112 payments for the Borrower. Lenders are also prohibited from refinancing a loan on or after February 1, 2021 that was approved beginning on September 28, 2020 and ending on January 31, 2021 in order to obtain Section 1112 payments for the Borrower.

C. Monthly Payment Limit for Second Round Section 1112 Payments

1. Monthly Section 1112 Payment May Not Exceed \$9,000

Under Section 1112(c)(4), no single monthly payment of principal, interest, and associated fees that is made by SBA in a Second Round Section 1112 Payment may total more than \$9,000. Lenders must not, therefore, submit a request to SBA to make any Section 1112 payment that exceeds the monthly amount of \$9,000. For a loan for which the Borrower makes loan payments less frequently than monthly, the monthly loan payment will be calculated based on the annual loan payment amount divided by 12.

2. Procedures Relating to Any Excess Due

The Borrower will be responsible for any amount that exceeds \$9,000 (“excess due”) and must either pay the Lender the amount over \$9,000 at the time the payment is due or enter into an agreement with the Lender in accordance with SBA’s Loan Program Requirements and prudent lending standards to pay that amount under mutually agreeable terms. SBA will issue further

guidance on the procedures for addressing any excess due with respect to 7(a) loans sold in pools in the secondary market and with respect to 504 loans. For additional financial assistance, SBA encourages Borrowers to apply for assistance under other available programs, including the Paycheck Protection Program and EIDL, if applicable.

D. One-loan Limitation for Certain Borrowers

A Borrower that has received, is receiving, or will receive, Section 1112 payments on a loan that was approved beginning on March 27, 2020 and ending on September 27, 2020 may not receive assistance under Section 1112 for any other loan approved beginning on or after February 1, 2021. *See* Section 1112(g), as amended. This one-loan limitation does not apply to affiliates of the Borrower.

E. Payment Processes for the Second Round Section 1112 Payments

1. For All 7(a) Loans Serviced by 7(a) Lenders (Including Community Advantage Loans):

For all 7(a) loans serviced by Lenders (whether purchased or not purchased by SBA), Lenders are required to submit to SBA by the 7th day of each month (or the next business day), the information required under paragraphs a. through d. below, and SBA will make the Second Round Section 1112 Payment based on that information by the 15th day of that month. For example, for the monthly loan payment that is due on or after February 1, 2021, Lenders must submit the information required under paragraphs a. through d. below by February 8, 2021 (since February 7 is a Sunday), and SBA will make the Section 1112 payment by February 15, 2021. Lenders must submit the information described 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:

- 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 is included in this amount. The amount must include both the guaranteed and non-guaranteed portions of the 7(a) loan. Lenders must not submit a total outstanding loan payment amount that exceeds \$9,000 (see Section III.C above);
- c. the ACH credit instructions for making the payment directly to the Lenders (SBA will not make the payments to any Lender Service Providers). Please be advised that 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; 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;
- 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; and
- v. any other certification required by SBA.

2. For SBA-Purchased 7(a) Loans Serviced by Lenders:

For SBA-purchased 7(a) loans serviced by Lenders, the amount that SBA will pay to the Lender will be the same as if the Borrower were making the full loan 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>).

3. For 504 loans:

- a. **For 504 Loans Serviced by CDCs:** SBA will make the Second Round Section 1112 Payments by the 15th day of each month to the Central Servicing Agent (CSA) based on information maintained in the CSA E-Tran system, and the CSA will make no ACH debits to the Borrower's account during the period in which the loan is receiving Second Round Section 1112 Payments.
- b. **For SBA-purchased Debentures or other 504 loans serviced by SBA:** For 504 loans that are serviced by SBA and are in regular servicing status, SBA will credit the loan with the section 1112 payment starting with the Next Installment Due Date.

F. Loans on Deferment Before Second Round Section 1112 Payments Begin

1. 7(a) Loans. For any covered 7(a) loan that has been granted a deferment, the Borrower may voluntarily decide to end the approved period of deferment early to begin the Second Round

Section 1112 Payments. Once payments begin, the period must be continuous and may not be interrupted by deferment.

2. 504 Loans

a. 504 Loans Subject to COVID-19 Agreements

i. Borrower Requests to Terminate Deferment Early

For a 504 loan that has been granted a deferment to remedy a substantial adverse change under a COVID-19 Agreement, the Borrower may submit a request to the CDC to terminate the “COVID-19 Substantial Adverse Change Remedy Certification and Agreement” (COVID-19 Agreement) and end the approved period of deferment early to begin the Second Round Section 1112 Payments. The CDC must submit this request to the appropriate SBA Commercial Loan Servicing Center (CLSC) for approval. The CDC must provide the CLSC with its evaluation of whether the Borrower will have the ability to timely make the payments owed under the Third Party Loan (TPL) during the Second Round Section 1112 Payments. If the CLSC concludes that it is not likely that the Borrower will have the ability to timely make the TPL payments during the period of SBA payments, the CLSC will deny the request to end the deferment early, unless the CDC submits a written commitment by the Third Party Lender to the CLSC that, if the COVID-19 Agreement is terminated, the Third Party Lender will grant the Borrower a deferment on the TPL that covers the period of the Second Round Section 1112 Payments.

NOTE: In order for SBA to make the Section 1112 payment by the 15th day of the month, the CSA must receive notice from the CLSC of the CLSC’s approval to terminate the COVID-19 Agreement by the 4th business day of the month. If such notice is received, the CSA will process the deferment cancellation and make the Section 1112 payment by the 15th day of that month. **To meet the schedule for payment by the 15th day of the month, CDCs are advised that they must submit the Borrower’s request to terminate the COVID-19 Agreement to the appropriate CLSC no later than the 25th day of the previous month, or the next business day. In the subject line of the request to the CLSC, the CDC must insert “Rescission of Deferment of COVID-19 Agreement”.** If the CLSC’s approval to terminate the COVID-19 Agreement is received after the 4th business day, the CSA will not process the Section 1112 payment until the following month.

ii. Catch-up Plans for Deferments Granted Under COVID-19 Agreements

To efficiently handle the large volume of loans that are closed each month, SBA has instructed the CSA to initially place the 504 loans that are granted deferments under the COVID-19 Agreement on 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.

b. Adverse Change Determination for 504 Loans Funded After February 1, 2021 that are Eligible for First or Second Round Section 1112 Payments

Under Section 1112(c) of the CARES Act, as amended, Congress has authorized payments under Section 1112 for a 6-month period for 504 loans that were approved on or before September 27, 2020, as well as for 504 loans that will be approved during the period beginning February 1, 2021 and ending September 30, 2021. Subject to the availability of funds, the Section 1112 payments for these loans would begin with the first payment due after the debenture sale that funds the loan. When making the determination of substantial adverse change required for these loans before funding, the CDC must consider whether it is likely that the Borrower (or Operating Company) will have the ability, during the 6-month period that SBA is authorized to make the monthly payments, to timely make the payments that will be owed to the Third Party Lender for the Third Party Loan financing the Borrower's 504 Project. If the Borrower is not likely to have that ability, the CDC must follow the procedures set forth in the applicable SBA Procedural Notice for remedying the adverse change, including the execution of the COVID-19 Agreement (Rev May 2020). (The applicable Notice for the February and March 2021 debenture sales is SBA Procedural Notice 5000-20064. SBA may issue additional notices to address subsequent debenture sales, as appropriate.)

c. Other Deferments Granted by CDCs

For any 504 loan that was granted a deferment by the CDC other than by the COVID-19 Agreement, the Borrower may voluntarily decide to end the approved period of deferment early to begin the Second Round Section 1112 Payments, and Lenders must inform Borrowers that it is their choice to either continue the deferment and begin receiving the SBA payments for the authorized period of time after the deferment ends OR end the deferment early to begin receiving the SBA payments. Once the Second Round Section 1112 Payments begins, the period must be continuous and may not be interrupted by deferment.

NOTE: In order for SBA to make the Section 1112 payment by the 15th day of the month, CDCs must submit the Borrower's request to cancel a deferment to the CSA by the 4th business day of that month. If the CSA receives a request to cancel a deferment after the 4th business day, the CSA will not process the Section 1112 payment until the following month.

G. Additional Guidance on Second Round Section 1112 Payments

The guidance provided below for the Second Round Section 1112 Payments is carried over from the guidance that SBA provided in prior notices issued with respect to the First Round Section 1112 Payments (except for paragraph 1.e below):

1. For 7(a) and 504 Loans:

a. Payments Received From Borrowers During Second Round

For 7(a) Loans, if a Lender receives a regular loan payment from a Borrower, in whole or in part, on a loan for which SBA is making the Section 1112 payment, 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.)

For 504 Loans, Borrowers may not make any partial prepayments on a 504 loan for which the debenture has not been purchased. Accordingly, for a 504 loan for which the debenture has not been purchased, if a 504 Borrower makes any regular monthly loan payments, in whole or in part, during the authorized period that SBA is making the loan payments, the payment must be returned to the Borrower unless the payment is being made to cover any past due amounts. For a 504 loan for which the debenture has been purchased, if the Borrower makes any regular monthly loan payments, in whole or in part, during the authorized 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.

b. Prepayments in Full

For any loan that is scheduled to be prepaid in full, the last payment that SBA will make under Section 1112 will be the monthly loan payment due prior to the date of prepayment.

c. Catch-up Plans or Other Settlements.

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 authorized period of SBA payments. 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, *i.e.*, SBA intends to exclude from the section 1112 payment 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.

d. Payments Will Not Exceed Outstanding Loan Balance

SBA payments will not exceed the outstanding balance of principal, interest and associated fees owed on a covered loan by the Borrower. The SBA payments may not be used to pay any outstanding late fees owed by the Borrower.

e. Prohibition on Lenders Charging Late Fees

In accordance with Section 1112(c)(8)(A) of the CARES Act, no Lender may charge a late fee to a Borrower with respect to a covered loan during any period in which SBA is making Section 1112 payments with respect to the loan, including on any amount that exceeds the monthly limit of \$9,000 on a Section 1112 payment.

2. For 7(a) Loans:

a. Loan Payments Less Frequent Than Monthly.

For a covered loan for which the Borrower makes loan payments less frequently than monthly (i.e., annually, semi-annually or quarterly), SBA will make the loan payment beginning with the next payment due, and the maximum amount that SBA will pay on these loans will be calculated by dividing the total annual loan payment amount by 12 and multiplying the result by the maximum number of months for which the loan is eligible to receive Section 1112 payments as set forth in Section III.B above. Lenders must not request the Section 1112 payment for the loan before the payment is due.

If the Second Round Section 1112 Payments is for a 6-month period, *see* Section III.B.1.c and III.B.2.c above, and the loan is scheduled for quarterly payments, SBA will make a total of four separate payments. The first of the four payments will cover the full amount due for the next quarterly payment, which is equal to three months of debt relief. For each of the three months thereafter, SBA will make three monthly payments in equal installments to cover the full amount due for the next quarterly payment.

b. Revolving Lines of Credit.

For revolving lines of credit, SBA will make the loan payments in accordance with the payment terms stated in the loan authorization, and the Section 1112 payments will begin only after the Borrower has made its first draw on the line of credit. A Borrower does not need to maintain a continuous outstanding balance in the revolving line of credit during the authorized period of Section 1112 payments to be eligible for the section 1112 payments. For example, the Borrower may have an outstanding balance for one month, a zero balance for one month, and then draw down again on the line of credit for a third month, and SBA would make the payments for the 3 months during which the Borrower had an outstanding balance. SBA will pay no more than the authorized period of Second Round Section 1112 Payments, as set forth in Section III.B above, on the same revolving line of credit, and these payments do not need to be made in consecutive months. The payments made by SBA may not be used to cover any balloon payments.

In addition, for loans made under the Export Working Capital Program, if a loan matures during the authorized period of SBA payments and another loan is taken out for the same purpose, the number of payments that SBA will make on these loans combined will not exceed the total number of months authorized under Section III.B above for the initial loan. If a Lender receives more than the authorized number of monthly payments, the Lender must immediately notify SBA and immediately return the payment.

c. Compliance with 1502 Reporting by 7(a) Lenders.

SBA reminds 7(a) Lenders that they must continue to comply with existing procedures regarding 1502 reporting and payment remittance as required by SOP 50 10.

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

A 7(a) term loan will not begin to receive Section 1112 payments until it has been fully disbursed and moved into a Regular Servicing Status. *See* paragraph II.A above, Definition of “Regular Servicing Status”. 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 to receive 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 authorized period for the Second Round Section 1112 Payments, as set forth in Section III.B above. 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 3/26/2020.

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

If an existing SBA Microloan, 504 loan, 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 shall not exceed the total number of months authorized under Section III.B above for the initial loan. 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 that loan is eligible for only 3 months of Section 1112 payments, and the Borrower refinances that loan with a new 7(a) loan, the new loan will only be eligible to receive one additional monthly payment under Section 1112. If more than the combined total of 3 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.

f. 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 this Notice, 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 Lender of Record. 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.

IV. Reconciliation of Second Round Section 1112 Payments to 7(a) Lenders

A. 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, provided that the adjustment does not equate to a monthly loan payment amount that exceeds \$9,000. 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 final section 1112 payment due on the loan, then the Lender may submit an additional 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. SBA understands that occasionally Lenders may not become aware by the final month that an underpayment was made for any month during the authorized period of Section 1112 payments. In such cases, the Lender may submit a request for additional funds to cover an underpayment made for any month of the authorized period of Section 1112 payments as soon as the Lender becomes aware of such underpayment, subject to the availability of funds for Section 1112 payments. The written request for the additional payment may be submitted to the FTA, Colson Services, by email and must include the SBA loan number, the amount of the underpayment, and a certification by the Lender that the loan is eligible for an additional Section 1112 payment under SBA Loan Program Requirements, including this Notice.

If the Lender received an overpayment for the 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. SBA has determined that it is not cost effective to require Lenders to return overpayments of \$10 or less

and, accordingly, Lenders need not return the funds to SBA if the amount of the overpayment with respect to a particular loan is \$10 or less. In such cases, instead of returning the overpayment to SBA, the Lender must credit the 7(a) loan for which the overpayment was made by the amount of the overpayment.

B. 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.

C. 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, subject to the \$10 threshold described in Section III.A above, 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.

D. For new 7(a) loans made beginning on February 1, 2021 and ending on September 30, 2021, if the SBA guarantee is cancelled after the loan is approved 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>.

John A. Miller
Acting Associate Administrator
Office of Capital Access