Are you an existing SBA loan borrower? The SBA will subsidize your loan payments

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Categories:

Coronavirus Response Team

Publications

On April 16, 2020, the U.S. Small Business Administration (SBA) issued a Procedural Notice answering questions about Section 1112 of the CARES Act. Under that section, the Act appropriated $17 billion in funding to assist borrowers with existing SBA 7(a) and 504 loans. Section 1112 provides for a six-month subsidy of principal, interest, and certain servicing and guarantee fee payments for eligible borrowers. Until the SBA issued the notice, both borrowers and lenders were uncertain about how to apply for subsidy payments. Thankfully, the notice provided much needed clarification on Section 1112's implementation. Among the most important guidance:

Borrower Eligibility

Effectively, the SBA will make six months of payments to the lender on behalf of any borrower with an SBA 7(a) or 504 loan that is in "regular servicing status" (a "covered loan"). Borrowers with loans in "liquidation" status or with a payment more than 120 days overdue will likely not have access to the program.

Duration of Six-Month Period

The six-month period begins with the first payment the SBA makes and continues uninterrupted for five subsequent payments. Borrowers cannot split up the deferment period. The SBA will make the initial payment for 7(a) and 504 loans originated before March 27, 2020, that are not on deferment beginning with the next payment due after March 27, 2020, as follows:

- **504 Loans:** The Section 1112 subsidy payments are only available for the 504-debenture made by a Certified Development Company (typically financing 40% of the original project cost). The program does not apply to the accompanying loan originated by a traditional lender (typically financing 50% of the original project cost in conjunction with the borrower's 10% equity contribution). The first 504-debenture payment was due on April 1, 2020, and the SBA will make the deferral payment by May 1, 2020. The SBA will make all payments to the Central Servicing Agent that administers the borrower's payments to the Certified Development Company associated with the borrower's 504 debenture except for those debentures that the SBA has purchased. As such, during the six-month period, the Central Servicing Agent will make no ACH debits to the borrower's account for payments on the 504-debenture.

- **7(a) Loans:** The due dates vary with each loan and the SBA will make the first payment directly to the 7(a) Lenders on or before April 30, 2020. If the borrower has already made a payment covering the first monthly payment from the SBA, the borrower may either request that the lender return their payment or apply it to reduce the loan balance after application of the SBA's payment.

Loans Currently on Deferment

For covered loans made before March 27, 2020, already on deferment, the SBA will make loan payments for a six-month period beginning with the next payment due after the deferment period, as follows:

- **504 Loans:** After the deferment ends, the SBA will make the loan payment to the Central Servicing Agent on the last business day of the month.
- **7(a) Loans:** After the deferment ends, the SBA will make payments to the lender by the 25th day of the month.

Covered Loans Originated After March 27, 2020

The SBA will make loan payments for the six-month period, beginning with the first payment due date, for loans originated between March 27, 2020, and September 27, 2020. If the lender grants the borrower an immediate deferment, the six-month period begins with the first payment due after the deferment ends.

Non-Monthly Payment Frequencies

The SBA will annualize payments for borrowers who do not make monthly payments. The SBA will divide the total annual loans payments due by 12 and then multiply that result by 6. For borrowers with a semi-annual payment, the SBA will make a single payment. For borrowers with quarterly payments, the SBA will make four payments. The first payment will cover the next quarterly payment, while the remaining three will be equal, monthly payments covering the next quarterly payment due.

Other Important Clarifications

- Borrowers may cancel their deferment to access the Section 1112 payments.
- For borrowers with less than six payments remaining, the SBA will only make payments equal to the remaining principal balance, interest, and certain fees.
- Section 1112 payments will not cover late fees or catch-up and settlement payments due under a borrower's plan with their lender.
- Lenders must continue to comply with existing procedures concerning 1502 reporting and payment remittance.

This Procedural Notice provided clarity for both borrowers and lenders on the implementation of the Section 1112 program under the CARES Act. Should you need any additional guidance, our team of attorneys is here to help. For more information on the Section 1112 Program, Paycheck Protection Program, Economic Injury Disaster Loans and other financial assistance available to businesses under the CARES Act, please contact Joe Brammer, or any attorney in Frost Brown Todd's Finance Practice Group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team, including a SBA lending team. Our attorneys are on hand to answer your

questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.