More Economic Relief for SBA Borrowers: The SBA Will Pay for Your Loan Payments for Up to Five Months

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This article replaces our February 3, 2021 article. It incorporates the February 16, 2021 guidance from the SBA[1] (the "Adjustment Plan"), which modified the length of subsidy payments due to insufficient funding. In the guidance, the SBA reduced the length of time borrowers may receive the Subsidy Payments, originally authorized under Sec. 1112 of the CARES Act, to ensure that all eligible SBA borrowers would receive at least some Subsidy Payments while exhausting all of the $3.5 billion in funding allocated by Congress.

Overview

The recently enacted Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, passed as part of the Consolidated Appropriations Act, 2021 (the "Act") extends the subsidy of loan payments authorized under Sec. 1112 of the CARES Act.

Under Sec. 1112 the U.S. Small Business Administration (SBA) was to make up to six months of loan payments for 7(a) and 504 loans in regular servicing status (a "covered loan"). For more information on the subsidy payments required by Sec. 1112 of the CARES Act please see our article, "Are You an Existing SBA Loan Borrower? The SBA Will Subsidize Your Loan Payment."

The recent changes to Sec. 1112, as amended by the Adjustment Plan, provide additional relief for certain borrowers—primarily, by providing up to five months (previously eight months) of payments of principal and interest and associated fees ("Subsidy Payments") for covered loans beyond the six-month period originally approved.

Summary of Second Round Section 1112 Payments

For those borrowers with covered loans made before March 27, 2020 and *not* on deferment, the SBA originally authorized Subsidy Payments for the six-month period beginning on the first payment due date after March 27, 2020.[2] The Act provides additional benefits of:

- For most 7(a) and 504 borrowers, the SBA will make Subsidy Payments for an additional two-month period[3] beginning with the first payment due on or after February 1, 2021.
- For most 7(a) and 504 borrowers in certain industries,[4] the SBA will make Subsidy Payments for a further three months immediately following the additional two-month period.[5]
- For borrowers with covered loans approved under the Community Advantage Pilot Program and SBA loans made by an intermediary using loans or grants received under 7(m) of the Small Business Act ("CAPP and 7(m) Borrowers"), the SBA will make Subsidy Payments for an additional five-month period[6] beginning with the first payment due on or after February 1, 2021.

For those borrowers with covered loans made before March 27, 2020 and on deferment, the SBA originally authorized Subsidy Payments for the six-month period beginning on the first payment due date after the deferment period. The Act provides additional benefits of:

- For most 7(a) and 504 borrowers, the SBA will make Subsidy Payments for an additional two-month period[7] beginning with the later of (i) the next payment due on covered loan after the deferment period, and (ii) the first month after the SBA has completed making Subsidy Payments for the initial six-month period described above.
- For most 7(a) and 504 borrowers in certain industries, the SBA will make Subsidy Payments for a further three months immediately following the additional two-month period. [8]
- For CAPP and 7(m) Borrowers, the SBA will make Subsidy Payments for an additional five-month period[9] beginning with the later of (i) next payment due on covered loan after deferment period, and (ii) first month after SBA has completed making Subsidy Payments for the initial six-month period described above.

Summary of Expanded Eligibility for First Round Section 1112 Payments.

Borrowers with covered loans approved and fully disbursed on or before September 27, 2020 are now eligible for first round Section 1112 Payments. Borrowers will begin receiving payments for the six-month period beginning on the first payment due date after the loan is fully disbursed.

Borrowers with covered loans approved on or before September 27, 2020 but fully disbursed on or after September 28, 2020, are now eligible for first round Section 1112 Payments. Borrowers will begin receiving payments for the three-month period[10] beginning on the first payment due date after the loan is fully disbursed.

For those borrowers with covered loans approved between February 1, 2021 and September 30, 2021, the SBA will make Subsidy Payments for the three-month period[11] beginning on the first payment due date.

A loan approved during the period beginning on September 28, 2020 and ending on January 31, 2021 is not eligible to receive Second Round Sec. 1112 Payments based on the latest SBA guidance. Lenders are prohibited from (i) cancelling loans approved between this period and resubmitting them to obtain Subsidy Payments, and (ii) refinancing any loan that the SBA approved between September 28, 2020 and January 31, 2021, on or after February 1, 2021.[12]

Other Important Changes and Limitations

The Act expanded the provisions of Sec. 1112(c) as well as adding additional subsections to the law:

- Limiting any Subsidy Payment made on behalf of borrowers during the additional three- or five-month periods implemented under the Act as well as any payments made on behalf of borrowers with covered loans approved between February 1, 2021 and September 30, 2021 to $9,000. To the extent any such Subsidy Payment would exceed $9,000, the SBA may require the lender to add that amount to be paid as interest at the end of the loan period. (§1112(c)(4)).
- Clarifying that eligibility determinations are based on when the SBA approved the loan, rather than the date on which the loan was fully disbursed. (§1112(c)(6)).

- Prohibiting lenders from charging late fees during the period in which the SBA is making Subsidy Payments and clarifying that the SBA will make all Subsidy Payments on or before the 15th of each month. (§1112(c)(8)).
- Limiting each borrower to receiving Subsidy Payments for only one covered loan. (§1112(g)).

Should you need any additional guidance, our team of attorneys is here to help. For more information on the Sec. 1112 Program, Paycheck Protection Program, Economic Injury Disaster Loans, and other financial assistance available to businesses under the CARES Act, please contact Joe Brammer, Becky Moore, or any attorney in Frost Brown Todd's Finance Practice Group.

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[1] *See* SBA Procedural Notice 5000-20095, Effective February 16, 2021.

[2] The Sec. 1112 subsidy payments were previously available only for loans that were fully disbursed on or before September 27, 2020. The Act expanded eligibility to include all loans *approved* on or before September 27, 2020, even if not fully disbursed until some later date.

[3] Previously, a two-month period.

[4] For covered loans originated before March 27, 2020 both on deferment and not on deferment, borrowers with an NAICS code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 532, or 812 are eligible for the five-month period for Subsidy Payments immediately following the additional three-month period added with the changes to Sec. 1112 of the CARES Act.

[5] Previously, for a further five months immediately following the three-month period.

[6] Previously, an eight-month period.

[7] Previously, a two-month period.

[8] Previously, for a further five months immediately following the three-month period.

[9] Previously, an eight-month period.

[10] Previously, a six-month period.

[11] Previously, a six-month period.

[12] *See* SBA Procedural Notice, Control No: 5000-20079, Effective January 19, 2021.