

Finance, Restructuring, and Bankruptcy



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SBA Guaranty Purchases and Lender Servicing Responsibilities for PPP Loans

The U.S. Small Business Administration (the “SBA”) recently issued important new guidance (SBA Procedural Notice 5000-812316, SBA Guaranty Purchases and Lender Servicing Responsibilities, effective July 15, 2021 (the “SBA Servicing Guidance”))¹ regarding the servicing of loans extended under the Paycheck Protection Program², which was initially established pursuant to the Coronavirus Aid, Relief, and Economic Security Act³ (the “PPP loans”). The purpose of the SBA Servicing Guidance is to reinforce certain servicing responsibilities that lenders have regarding PPP loans under SBA’s existing rules and regulations (collectively, the “Program Requirements”)⁴, and to advise lenders of the guaranty purchase process required for SBA to honor its 100 percent guaranty on each PPP loan.

The SBA Servicing Guidance provides amplification and further advice on a number of scenarios that commonly arise in the context of servicing and liquidating PPP loans.

In this regard, the SBA Servicing Guidance provides that a lender’s primary servicing responsibility is to work with the borrower under each PPP loan to seek full loan forgiveness under applicable Program Requirements within ten months of the end of the applicable PPP loan forgiveness covered period; or, in the event of default or other qualifying event, request that SBA honor its guaranty of 100 percent repayment of the PPP loan and charge off any remaining balance of the PPP loan under the procedures set forth in the SBA

Servicing Guidance. The SBA Servicing Guidance enumerates the servicing responsibilities that SBA expects each PPP lender to observe. It is important to note that the SBA Servicing Guidance (i) makes clear that the lender must service each PPP loan until it is fully forgiven, paid in full, or charged off and (ii) provides that if a borrower becomes more than 60 days past due in repayment of a PPP loan that has not been wholly forgiven, the lender should make a request for SBA to make a guaranty purchase of the guaranteed balance of the PPP loan and charge off of the uncollected balance through the use of SBA’s PPP platform.

The SBA Servicing Guidance also provides that if a borrower under a PPP loan has filed for bankruptcy protection after disbursement of a PPP loan, unless the loan has been fully forgiven and the bankruptcy proceeding is a no asset proceeding, the lender must provide SBA with a notice of the bankruptcy filing; file a proof of claim; and continue to monitor the proceeding. However, SBA has now indicated that it does not generally expect lenders to take actions in bankruptcy proceedings in excess of the above minimal actions, and will only approve legal expenses related to the bankruptcy if SBA determines, upon review of a litigation plan submitted by the lender, that the legal expenses which would be incurred are cost effective in context of any expected recovery. These clarifications included in the SBA Servicing Guidance provide a different approach to addressing borrowers in bankruptcy than has been the approach required

in addressing bankruptcy filings by borrowers more broadly in the 7(a) loan program (of which PPP loans are a part). Nonetheless, the SBA Servicing Guidance suggests that there may be circumstances in which lenders should be prepared to take further action, in coordination and with the approval of the SBA. Lenders will need to assess different situations to make judgments on whether to seek approval for additional action and what is reasonably required in order to continue monitoring of bankruptcy proceedings, but it is helpful that SBA has clarified that, in many circumstances, no action beyond the steps outlined will be necessary or appropriate.

The SBA Servicing Guidance enumerates the circumstances under which the lender may ask SBA to honor its guaranty and obtain a charge-off of a PPP loan. Notably, these circumstances include most bankruptcy proceedings where the court enters an order confirming a reorganization plan that does not provide for repayment of 100 percent of the debt under the PPP loan. The SBA Servicing Guidance also provides the circumstances in which the lender may request SBA to honor its guaranty without charge-off of the balance. This would most commonly occur when the borrower has appealed a forgiveness decision and that appeal is pending before SBA's Office of Hearings and Appeals.

The SBA Servicing Guidance also describes what a lender must do if the borrower of a PPP loan submits a forgiveness request after the lender has submitted a request for SBA to honor its guaranty, and describes how lenders are to submit requests for SBA to honor its guaranty and charge-off of a

PPP Loan using the SBA platform. Notably, complete instructions for usage of the SBA platform in this context are not included in the Notice and will be posted at a later date.

Finally, the SBA Servicing Guidance makes clear that SBA will honor its guaranty and purchase 100 percent of the outstanding balance of a PPP loan only if the lender has complied with Program Requirements, including applicable underwriting requirements and document collection and record retention requirements. Although the burdens placed on lenders at the outset of the PPP loan program were minimal, the SBA Servicing Guidance makes clear that lenders should maintain careful compliance with the requirements for continuing to service PPP loans.

The SBA Servicing Guidance provides helpful new information that should assist lenders in determining further servicing actions under the PPP loans, including, how to proceed in the context of borrower bankruptcy filings.

For additional information, please contact:

Martin Teckler, Washington, D.C. Office
Partner, Finance, Restructuring, and Bankruptcy
202.420.2590 | mteckler@blankrome.com

Grant E. Buerstetta, New York Office
Partner and Co-Chair, Finance, Restructuring,
and Bankruptcy
212.885.5454 | gbuerstetta@blankrome.com

1. The SBA Servicing Guidance can be found here: [PPP Guaranty Purchases, Charge-Offs, and Lender Servicing Responsibilities \(sba.gov\)](#)
2. The Paycheck Protection Program (as amended, the "PPP") was established under Division A, Title I, of the CARES Act and has been subsequently modified pursuant to the Paycheck Protection Program and Healthcare Enhancement Act, Pub. L. 116-139, Apr. 24, 2020, the Paycheck Protection Program Flexibility Act of 2020, Pub. L. 116-142, Jun. 5, 2020, the Consolidated Appropriations Act, 2021, Pub. L. 116-260, Jan. 27, 2021, the American Rescue Plan Act of 2021, Pub. L. 117-2, Mar. 11, 2021 and the PPP Extension Act of 2021, Pub. L. 117-6, Mar. 30, 2021.
3. The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (as amended, the "CARES Act"), was initially enacted on March 27, 2020.
4. "Program Requirements" means all regulations and SBA Guidelines under the CARES Act, the Paycheck Protection Program Flexibility Act, the Economic Aid Act, Section 7(a)(36) and (37) of the Small Business Act, any of the rules or guidance that has been issued by SBA implementing the PPP, including any rule, frequently asked question, or any other applicable SBA loan requirements, as defined in 13 C.F.R. § 120.10, et. seq.