



# SBA Procedural Notice

**TO:** All Paycheck Protection Program Lenders and SBA Employees

**CONTROL NO.:** 5000-812316

**SUBJECT:** SBA Guaranty Purchases and Lender Servicing Responsibilities for PPP Loans

**EFFECTIVE:** July 15, 2021

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, as amended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act, the American Rescue Plan Act of 2021, and the PPP Extension Act of 2021, authorized SBA to guarantee loans under the Paycheck Protection Program (PPP), a new temporary 7(a) program, through June 30, 2021. PPP loans made under sections 7(a)(36) and (37) of the Small Business Act are referred to as “First Draw PPP Loans” and “Second Draw PPP Loans,” respectively. (Both are hereinafter referred to as “PPP loan” or “loan”.) The purpose of this Notice is to remind PPP Lenders of their servicing responsibilities and to advise PPP Lenders of the guaranty purchase process for SBA to honor its 100% guaranty on a PPP loan.

## What are a Lender’s Servicing Responsibilities for PPP loans?

Lenders must service PPP loans until they are fully forgiven or paid in full or, in the event of a default or other qualifying event, until SBA purchases the guaranty and charges off any uncollectable remaining balance. Lenders should work with the borrower to seek forgiveness at the end of the borrower’s loan forgiveness covered period or, in the event of a default or other qualifying event, to request guaranty purchase and charge off in accordance with the procedures discussed further below.

As part of their servicing responsibilities, PPP Lenders are required to:

- Keep an accurate record under its direct control of each loan;
- Collect and apply loan and forgiveness payments;
- Submit separate monthly SBA Form 1502 reports that include loan status information for their PPP loans, regardless of whether the borrower made a payment in the current month

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**EXPIRES: 7/1/22**

SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58

or whether the loan is in deferment, until the loan is paid in full, fully forgiven, or, if applicable, until SBA purchases the guaranty on the loan<sup>1</sup>;

- Document all loan modifications, including changes of ownership. Note: Borrowers may not receive forgiveness unless the loan details are correct in E-TRAN;
- Issue a decision to SBA in accordance with PPP Loan Program Requirements when the borrower submits a forgiveness application.<sup>2</sup> In the event a borrower does not submit an application for forgiveness within 10 months of the end of the covered period, the Lender must communicate with the borrower to determine the status of the business (e.g., whether the business is open, closed, in bankruptcy, etc.) and notify the borrower of the date the first payment on the loan is due. The Lender must document communication attempts and results in its files;
- If a borrower does not submit a forgiveness application within 10 months of the end of the covered period, or if the PPP loan is partially forgiven or forgiveness on the PPP loan is denied in full, the borrower must make payments in accordance with the note, and the Lender must continue servicing the loan until it is paid in full or SBA purchases the guaranty<sup>3</sup>;
- If the borrower becomes more than 60 days past due, the Lender should make demand for payment in full and submit a request for guaranty purchase and charge off through the Platform;
- If a balance remains after a Lender receives a forgiveness payment from SBA, the principal and interest reduction from the forgiveness remittance and any loan payments received from the borrower must be reported on the SBA Form 1502 before the lender submits a guaranty purchase request;
- If the borrower does not receive full forgiveness on the loan, and the Lender receives any post-guaranty purchase payments from the borrower, the Lender must send the full payments to SBA via Pay.Gov (<https://www.pay.gov/>) using the payment code 172.

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<sup>1</sup> See, SBA Procedural Notice 5000-20091 (February 8, 2021), *Second Updated Paycheck Protection Program Lender Processing Fee Payment and 1502 Reporting Process*.

<sup>2</sup> PPP Loan Program Requirements means sections 7(a)(36), 7(a)(37) and 7A of the Small Business Act, any rules or guidance that have been issued by SBA implementing the PPP, or any other applicable Loan Program Requirements, as defined in 13 CFR § 120.10, as amended.

<sup>3</sup> The Lender must also service the loan while awaiting SBA's forgiveness remittance, including while awaiting the issuance of a final SBA loan review decision.

## **What Should Lenders do in the Event Borrower Files Bankruptcy?**

Generally, PPP borrowers that file bankruptcy after loan disbursement are eligible to apply for forgiveness if loan funds have been used for eligible payroll and nonpayroll costs during the covered period. Unless the loan has been fully forgiven, if the borrower files bankruptcy other than a Chapter 7 no asset bankruptcy, the Lender must provide SBA with a notice of the bankruptcy filing, file a proof of claim, and continue to monitor the bankruptcy.

Because PPP loans are 100% guaranteed and unsecured, SBA does not expect Lenders to take action in the bankruptcy proceeding beyond filing a proof of claim. SBA considers filing the proof of claim to be a nominal administrative cost prior to filing the request for purchase. SBA does not reimburse for administrative costs. If SBA has purchased the loan, Lender must send any subsequent recoveries received from the bankruptcy to SBA via Pay.Gov (<https://www.pay.gov/>) using the payment code 172. Generally, SBA does not anticipate a need for lenders to incur expenses related to litigating the loan; however, SBA will honor litigation plans if approved by SBA prior to the date of this Notice. Effective with the date of this Notice, SBA will generally not approve any additional litigation plans unless SBA determines there is a reasonable expectation for recovery in excess of legal expenses.

## **What are the Circumstances Under Which a Lender May Simultaneously Request Guaranty Purchase and Charge-Off?**

A Lender may simultaneously request a guaranty purchase and charge-off from SBA when the borrower:

- Is 60 days or more past due on scheduled loan payments and the default has not been cured;
- Is permanently closed and does not plan to submit a forgiveness application;
- Has filed for Chapter 7 bankruptcy protection;
- Has filed for Chapter 11, 12, 13 bankruptcy once a period of at least 60 days has elapsed from the end of the PPP loan deferment period or any time after an order is entered confirming a plan if the plan does not provide for payment of 100% of the underlying debt; or
- In the case of self-employed individuals, sole proprietors, single-member LLCs, or independent contractors, the owner is deceased.

## **What are the Circumstances Under Which a Lender May Request Guaranty Purchase?**

A Lender may request guaranty purchase (without charge-off) from SBA when:

- The borrower or any owner of 20% or more of the borrower, has been indicted for or convicted of a felony related to the PPP loan; or
- The borrower has filed an appeal of a final SBA loan review decision with the Office of Hearings and Appeals (OHA) in accordance with PPP Loan Program Requirements. Lender may request guaranty purchase 60 days after the borrower has filed its appeal with OHA.

## **What Must a Lender do if a Borrower Submits a Forgiveness Application After the Lender Submitted a Request for Guaranty Purchase?**

If the Lender receives a forgiveness application from the borrower subsequent to requesting guaranty purchase, the Lender must submit its forgiveness decision to SBA in accordance with PPP Loan Program Requirements.

- If SBA has not yet completed the guaranty purchase and charge-off process (if applicable), the Lender must immediately withdraw the request through the Platform. SBA will complete its review of the forgiveness decision prior to reviewing the guaranty purchase request.
- If SBA has purchased the guaranty, the Lender must comply with the PPP forgiveness processes in effect on the date that the loan forgiveness application is received from the borrower and submit its forgiveness decision to SBA. If the borrower is eligible for loan forgiveness in any amount, SBA will not remit a forgiveness payment to the Lender. Instead, the SBA-approved forgiveness amount (if any) will be applied to reduce the outstanding amount of the loan owed by the borrower.

## **How do Lenders Submit Requests for Guaranty Purchase and Charge-Off?**

**Beginning July 15, 2021**, the existing PPP Platform will be programmed to allow Lenders to submit requests for guaranty purchase and charge-off for individual PPP loans. The Platform also makes available Application Programming Interfaces (APIs) using an automated method. Additional guidance on how to use the Platform, including step-by-step instructions, will be posted to the Platform. The request for guaranty purchase and charge-off must be made by the Lender that owns the PPP loan at the time of purchase (Lender of Record in the Platform/ETRAN).

- Lender must use the SBA guaranty purchase workflow within the Platform to look up the PPP loan and begin the simplified guaranty purchase process.

- Lender must confirm the accuracy of data prepopulated by SBA within this workflow. If borrower fields do not match, the Lender must resolve discrepancies with SBA prior to proceeding.
- If the loan involves a change of ownership that has not been reported to SBA, Lender must provide data related to the details of the sale of the business, including purchaser information. If requested by SBA, Lender must provide any assumption agreement(s) or other documentation related to the change of ownership.
- Lender will have the option to request purchase of the First Draw PPP loan, the Second Draw PPP loan, or both. The Platform will automatically tie a First Draw PPP loan to a Second Draw PPP loan if both loans were made by the same Lender. SBA encourages Lenders to simultaneously request guaranty purchase for both PPP loans, if appropriate.
- Lender will check the appropriate box(es) to identify the reason(s) for requesting guaranty purchase and charge off, and to indicate whether the loan is eligible for Treasury referral.
- Lender must provide the principal balance and accrued interest and upload the official transcript of account which should be based on a pay-off date within 10 days from the date of guaranty purchase submission.
- At the time of guaranty purchase, SBA will pay accrued interest (interest that has not been paid either by the borrower or SBA) through the payment deferment period plus up to a maximum of 120 days of additional interest due to payment default, pursuant to 13 CFR 120.522(b).
- Lender must retain, and provide to SBA upon request, copies of the following documents:
  - Borrower Application Form 2483, Second Draw Borrower Application Form 2483-SD, Borrower Application Form for Schedule C Filers Using Gross Income 2483-C, or Second Draw Borrower Application Form for Schedule C Filers Using Gross Income 2483-SD-C, whichever is applicable, or Lender's equivalent.
  - Supporting documentation submitted by the borrower to confirm the amount of the borrower's average monthly payroll costs that were used to calculate the PPP loan amount.
  - For a Second Draw Loan greater than \$150,000 or a loan of \$150,000 or less where the borrower provided documentation of revenue reduction, the documentation submitted by the borrower to confirm the borrower's 25% revenue reduction.
  - Borrower's written certification and supporting documentation relied upon to resolve hold codes and/or compliance check error messages (if applicable).
- Lender must upload a certified copy of the signed note and any modifications to the note.

- Lender must complete and execute the [SBA Assignment](#) for referral to Treasury and upload it into the Platform.
- After charge-off, if further collection is not barred by a valid legal defense such as compromise, discharge in bankruptcy, or the statute of limitations, the loan and the borrower must be referred to Treasury for further collection efforts after assignment of the loan documents to SBA. (Debt Collection Improvement Act of 1996)

SBA will process the guaranty purchase payment to the same ACH account where the Lender directed SBA to remit forgiveness payments (current Lender of Record in Platform/ETRAN). The ACH and Routing information is taken from the Platform within the institution's setting.

### **What Certifications are Lenders Required to Make?**

An Authorized Lender Official must certify the following for each guaranty purchase request:

- The documentation and information provided by the Lender to SBA with this submission accurately reflects the Lender's records for the PPP loan;
- The official transcript of account provided by the Lender is true and accurate;
- The data reported by the Lender as reflected in E-Tran as of the date of this certification, including the loan status and the outstanding balance of the loan, is true and accurate;
- The Lender has made, closed, and serviced the loan in accordance with the PPP Loan Program Requirements;
- The PPP loan has not been cancelled, repaid in full or forgiven by SBA in full;
- The PPP loan is evidenced by a legally enforceable promissory note executed by an authorized borrower representative, and the promissory note and any modification(s) were made in accordance with the PPP Loan Program Requirements.

SBA will review a Lender's request for guaranty purchase and charge-off in accordance with PPP Loan Program Requirements. SBA will honor its guaranty and purchase 100 percent of the outstanding balance of the loan provided that the Lender has complied with all PPP Loan Program Requirements, including the Lenders' underwriting requirements in [86 FR 3692](#) and [86 FR 3712](#) and the document collection and retention requirements described in the Lender application forms (SBA Form 2484 or SBA Form 2484-SD). Pursuant to 13 CFR 120.524(a)(8), SBA will be released from liability on its guaranty if the Lender fails to request that SBA purchase the guaranty within 180 days after maturity of the loan.

### **Report fraud, waste, or abuse to SBA to each of the following:**

Office of Credit Risk Management at [OCRM@sba.gov](mailto:OCRM@sba.gov) or [OCRMFraudNotification@sba.gov](mailto:OCRMFraudNotification@sba.gov);

Office of the Inspector General at [OIG Online Complaint Submission System](#).

## Questions

Questions concerning guaranty purchase or charge-off of PPP loans may be directed to [PPPLoanPurchase@sba.gov](mailto:PPPLoanPurchase@sba.gov).

All other questions may be directed to the Lender Relations Specialist in the [local SBA Field Office](#) in the local SBA Field Office.

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