



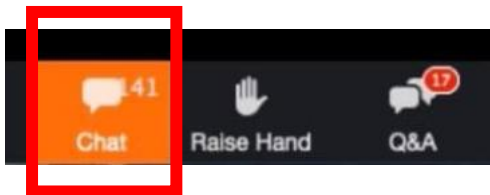
**J.R. Bruno**  
& ASSOCIATES

# **ASK THE EXPERTS**

January 21, 2021

## Copy of Today's Presentation

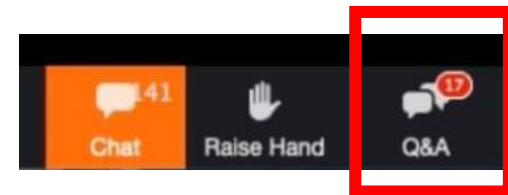
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## Submitting Questions

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If we don't have time to answer them live today, we'll respond by email.



# PANELISTS

## Guest:

- Jan Garlitz, Esq. Janice E. Garlitz, P.C.
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## J. R. Bruno & Associates:

- Sanford (Sandy) Mortan, Senior Associate
- Richard Jeffrey, Senior Associate CDC Outreach
- Alex Liberchuk, President, J R Bruno & Associates

# TODAY'S TOPICS

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**Good News  
for Our  
Borrowers and CDCs**

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**Jan Garlitz & Richard Jeffrey**

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**Getting A Head Start  
While Awaiting  
SBA Guidance**

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**Sanford (Sandy) Mortan**

# **GOOD NEWS FOR OUR BORROWERS AND CDCS**

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**Jan Garlitz and Richard Jeffrey**

# FEDERAL TAX TREATMENT OF CARES ACT § 1112 PAYMENTS, EIDL ADVANCES, ETC.

- The Economic Aid Act § 278 provides that CARES Act § 1112 payments of principal, interest and fees, EIDL Advances and Grants, and Paycheck Protection Program forgiven loan amounts are not included in a Borrower's gross income for federal tax purposes
- This is only for federal tax purposes – some states follow federal tax guidance; other states do not
- When notifying your Borrowers of this good news, be sure to add that your CDC does not provide tax advice and the Borrower needs to consult its own tax advisors

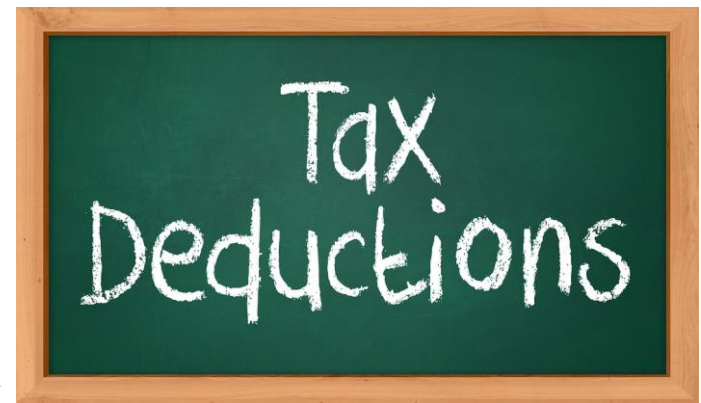


# IRS

Department of the Treasury  
**Internal Revenue Service**

# CARES ACT § 1112 PAYMENTS

- Section 1112 payments are not included in the gross income of the person on whose behalf SBA made the payments
  - Person means both individuals and entities who are SBA Borrowers
- In addition, no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied because the § 1112 payments are excluded from gross income



## CARES ACT § 1112 PAYMENTS *cont.*

- For a Borrower entity that elects Subchapter S “pass-through” tax treatment, the § 1112 payments are treated as tax exempt income
- For a partnership Borrower, any increase in the adjusted basis of a partner’s ownership interest with respect to the § 1112 payments is deemed to equal the partner’s distributive share of deductions resulting from interest and fees paid by SBA and the partner’s share of principal paid by SBA so there will be no federal tax impact





# EIDL ADVANCES AND GRANTS

- The amount of any EIDL COVID-19 Advance or Grant is not included in gross income for federal tax purposes
- In addition, a Borrower can take its usual deductions for costs paid with EIDL Advance or Grant
- As with § 1112 payments:
  - For an entity that elects Subchapter S “pass-through” tax treatment, the EIDL Advance or Grant is treated as tax exempt income
  - For a partnership, Treasury/IRS will prescribe rules for determining a partner’s distributive share of any EIDL Advance or Grant for federal tax purposes



# PAYCHECK PROTECTION PROGRAM FORGIVEN LOAN AMOUNTS

- For your Borrowers with PPP Loans, the amount that is forgiven is not included in gross income for federal tax purposes
- As with § 1112 payments:
  - For an entity that elects Subchapter S “pass-through” tax treatment, the forgiven PPP loan amount is treated as tax exempt income
  - For a partnership, any increase in the adjusted basis of a partner’s ownership interest with respect to the forgiven PPP Loan amount is deemed to “equal the partner’s distributive share of deductions resulting from costs giving rise to forgiveness” so there is no federal tax impact

# PPP FORGIVEN LOAN AMOUNTS *cont.*

- In addition, no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied because the forgiven PPP Loan amount is from gross income
- This means that a PPP Borrower can take its usual deductions for costs paid with the PPP Loan such as payroll, rent, utilities, interest on mortgages, etc.



# CDC FEE WAIVERS

- Economic Aid Act § 327(b) provides two fee waivers for 504 Loans:
  - CDC Processing Fee – SBA will pay the CDC
  - Third Party Lender participation fee – don't collect
- While we await guidance from SBA, if your Authorization has an Approval Date on or after December 27, 2020 and you are getting ready to close the 504 Loan and have Loan Documents signed, then process a 327 action with the SLPC to change the CDC Processing Fee in your Debenture pricing to \$0.00
- This will reduce the Gross Debenture Proceeds and the 504 Loan and Note amount affecting many of your Loan documents



# CASH-OUT SUBORDINATIONS

- Economic Aid Act § 328 provides that for 1 year beginning December 27, 2020, a CDC is authorized to allow the refinancing of a senior loan in an amount that, when combined with the outstanding balance of the 504 Loan, is not more than 90% of total Loan to Value
  - To establish LTV, an appraisal probably will be required
- Cash out from the refinancing can be used not only for Project Property collateral, but also for business operating expenses



# EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

- On January 19, 2021, SBA published a proposed rule providing that faith-based organizations will now be eligible to participate in the Business Loan Programs (504 and 7(a)) and Disaster Assistance Programs
- The proposed rule will eliminate 13 C.F.R. §120.110(k), which has provided that “businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting” are ineligible Borrowers



# EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS *cont.*

- SBA's rationale is based on two Supreme Court decisions where the Court concluded that state policies disqualifying churches and other religious organizations from receiving grants for playground resurfacing and from using tax-credit scholarship programs at religious schools violate the Free Exercise of Religion clause in the First Amendment
- In an April 3, 2020 letter to Congress, SBA already announced its decision not to enforce or apply 13 C.F.R. § 120.110(k)
- This is a proposed rule so we'll have to see what happens

# FUTURE CARES ACT § 1112 PAYMENTS

- Finally, the Economic Aid Act provides additional § 1112 payments for qualifying SBA Loans approved:
  - Before March 27, 2020 (when the CARES Act become law)
  - From March 27, 2020 through September 27, 2020 (during the original CARES Act)
  - From February 1, 2021 through September 30, 2021
- Since there are no CARES Act § 1112 payments for Loans approved September 28, 2020 through January 31, 2021, we recommend holding 504 Loan applications until February 1, 2021





# Questions?

# **GETTING A HEAD START WHILE AWAITING SBA GUIDANCE**



**Sanford (Sandy) Mortan**

# CHANGE IN § 1112 PAYMENT AMOUNT

- The Economic Aid Act contains a major change in the amount of CARES Act § 1112 payments
- The maximum monthly payment amount for Second Round § 1112 payments will be the lesser of the 504 Loan's Amortization Schedule payment or \$9,000.00
- Most borrowers have seen the info in the papers or online, but did they read the fine print? Probably not



# CHANGE IN § 1112 AMOUNT *cont.*

- Making sure those Borrowers who are impacted by the change are aware of it now will avoid issues down the road
- Any 504 Loan with a monthly Amortization Schedule payment over \$9,000.00 will be impacted
- Any borrower on a catch-up plan also is impacted regardless of the Amortization Schedule or § 1112 payment amounts



# DETERMINING WHICH LOANS ARE IMPACTED

- The monthly Status of Portfolio Report is the best source of information
- The CDC Online section of the CAFS system contains the Report
- The Report can be downloaded in Excel format for easy sorting
- When you download the Report, the format changes slightly

# ACTUAL REPORT

## Status of Portfolio - 504 Program

CDC Report Date: 01/01/2020 As of: 12/31/2019

Number of months delinquent: # Over nine months delinquent \* L=Late Fee Only D=Deferred C=Catch Up Period P=Auto Paydown A=Five Year Break

CDC: 01-249 NEW ENGLAND CERTIFIED DEVELOPMENT CORPORATION

NO	STATEMENT NAME	PCM	LOAN NO.	ISSUE DATE	MAT. DATE	LAST PAID	LOAN AMT.	MONTHLY PAYMENT	FEES/REV	INT.	PRN.	LATE	TOTAL DUE	ACTUAL BALANCE AT DEC 31	ST. REPT
1	24 SPRING STREET LLC	4	701	01/15/2014	01/01/2034	12/03/2019	1,184,000.00	8,255.99	1,540.60	2,701.84	4,223.55	0.00	8,265.99	921,895.09	
2	904 MAIN STREET REALTY COMPANY	4	00	02/16/2005	02/01/2025	12/03/2019	1,300,000.00	8,268.13	923.01	1,794.17	6,550.95	0.00	9,268.13	458,641.72	A
3	23 CARENSHILL STREET, LLC	4	00	07/11/2012	07/01/2032	12/03/2019	366,000.00	2,513.93	474.00	635.43	1,504.50	0.00	2,613.93	265,238.93	
4	A & R BODY SPECIALTY AND	4	08	12/12/2001	12/01/2021	12/03/2019	189,000.00	1,437.69	60.34	155.23	1,251.82	130.00	1,587.69	31,792.26	L
5	A - J LANGDON ENGINEERING, LLC	4	10	02/17/2016	02/01/2036	12/03/2019	106,000.00	743.06	181.26	174.98	385.82	0.00	743.06	90,876.27	C
6	A CHILDS UNIVERSITY, LLC	4	06	12/17/2014	12/01/2034	12/03/2019	754,000.00	6,103.19	1,021.48	1,377.02	2,704.69	0.00	6,103.19	601,612.14	A
7	A HEARNEY ARCHITECTS, LLC	4	8568315002	01/11/2017	01/01/2037	12/03/2019	144,000.00	1,026.76	241.38	302.93	484.15	0.00	1,026.76	127,844.28	
8	A.E. ARNOLD ENTERPRISES, INC	4	2178577006	06/13/2018	06/01/2038	12/03/2019	177,000.00	1,296.66	256.95	510.71	529.00	0.00	1,296.66	167,533.13	
9	JERAMSON & COMPANY, LLC	4	3846257005	10/16/2019	10/01/2039	12/03/2019	679,000.00	4,300.46	630.64	1,169.10	2,280.72	0.00	4,300.46	673,852.57	

# EXCEL VERSION (SOME FIELDS HIDDEN))

SOD	DistNm	CDC Regn	CDC Nmb	CDCNm	Prgm Nmb	Loan Nmb	StmntNm	IssDt	Loan Amt	Mo Pymt Amt	Stat Cd
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	123456	ACADEMY	1/16/2019	548000	3802.12	A
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	234567	BRYAN'S LLC	10/17/2012	93000	570.6	C
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	345678	COMPANY	6/17/2020	74000	358.34	L
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	456789	CONTRACTOR	10/12/2011	191000	1181.77	D
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	567890	CORPORATION	9/11/2019	143000	1442.34	C
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	678901	CREATIVE ARTS	5/17/2017	172000	1181.51	
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	789012	PRESCHOOL, LLC	6/15/2016	374000	2447.54	
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	890123	RESTAURANT	12/15/2010	220000	1426.82	A
	DISTRICT OFFICE	11	123	DEVELOPMENT CORPORATION	4	901234	RESTAURANT LLC	10/11/2017	464000	3097.64	

# LOANS WITH CATCH-UP PLANS

- In the last column of the Status of Portfolio Report, “Stat Cd,” a “C” will designate that the Loan has a Catch-Up Plan
- The monthly payment amount (Mo Pymt Amt column) is the Amortization Schedule payment amount, not the catch-up amount
- You will have to determine the catch-up amount from the approved Catch-Up Plan





# LOANS WITH CATCH-UP PLANS *cont.*

- The § 1112 payment only covers the Amortization Schedule payment up to \$9,000.00
- If the Amortization Schedule payment is \$9,000 or less, the Borrower still is responsible for paying the catch-up amount
  - § 1112 payments do not include catch-up amounts
- If the Amortization Schedule payment is over \$9,000, the Act says SBA **may** require the lender to add the amount over \$9,000 as interest to be paid by the Borrower at the end of the loan period
  - This applies to SBA Loans both with and without catch-up plans

# LOANS WITH CATCH-UP PLANS *cont.*

- As noted, the Borrower is still required to pay the difference between the Amortization Schedule payment and the catch-up payment amount
- EXAMPLE:
  - Amortization Schedule payment: \$10,000.00
  - Monthly payment including catch-up: \$11,500.00
  - Borrower is responsible for \$1,500.00 catch-up payment (\$11,500.00 minus \$10,000.00)
  - Amount that Lender may be asked to add to end of loan: \$1,000.00 (\$10,000.00 minus \$9,000.00)

# MONTHLY PAYMENTS OVER \$9,000.00

- By sorting on the “Mo Pymt Amt” column, you can determine which Loans fit this category
- If the “Stat Cd” column has an “A,” it indicates that the Loan is either at the 5-year anniversary or approaching the anniversary date
- If this is the case, you will have to determine the date that the payment amount will change and the new amount



# MONTHLY PAYMENTS OVER \$9,000.00 *cont.*

- If SBA does not request the lender to add the excess of the Amortization Schedule payment over the § 1112 maximum payment of \$9,000.00 to the end of the loan, then the Borrower will be responsible for paying that difference monthly
- If this is the case, the industry is recommending that the CSA debit the excess of the Amortization Schedule payment amount over the \$9,000.00 payment
- BUT until SBA issues guidance, it can't be determined if the excess amount will be added to the end of the Loan or paid monthly

# ENDING DEFERMENTS TO GET § 1112 PAYMENTS

- If a Borrower with a COVID-19 Agreement deferment wants to end the deferment early to get § 1112 payments, the Borrower must submit a request to the CDC
- The CDC, in turn, must submit a request to the applicable CLSC with the CDC's evaluation of whether the Borrower will have the ability to make timely payments on the Third Party Loan while SBA is making the § 1112 payments
- If the CLSC concludes that it is unlikely that the Borrower can make the TPL payments, it will deny the request to end the deferment early unless the CDC submits a written commitment from the Third Party Lender to grant a deferment to the Borrower during the § 1112 payments

# ENDING DEFERMENTS TO GET § 1112 PAYMENTS *cont.*

- Since SBA makes § 1112 payments by the 15th day of the month, the CSA must receive notice from the CLSC of its approval to terminate the COVID-19 Agreement deferment by the 4th business day of the month
  - If not received by the 4th business day, the CSA will not process the § 1112 payments until the following month
- Consequently, CDCs must submit any requests to end COVID-19 Agreement deferments to the applicable CLSC by no later than the 25th day of the previous month or the next business day
  - In the subject line of the request, the CDC must insert “Rescission of Deferment of COVID-19 Agreement”

# ENDING DEFERMENTS TO GET § 1112 PAYMENTS *cont.*

- For any deferments granted by the CDC other than by the COVID-19 Agreement, the Borrower may voluntarily end the deferment early to begin § 1112 payments
- CDC must inform the Borrower that it is the Borrower's choice to either continue the deferment and begin receiving § 1112 payments when the deferment ends or end the deferment early to begin receiving § 1112 payments



# ENDING DEFERMENTS TO GET § 1112 PAYMENTS *cont.*

- In order for SBA to make the § 1112 payment by the 15th day of the month, the CDC must submit the Borrower's request to cancel the deferment to the CSA by the 4th business day of that month
  - If not received by the 4th business day, the CSA will not process the § 1112 payments until the following month
- Once any Second Round § 1112 payments begins, the payment period must be continuous and may not be interrupted by deferment



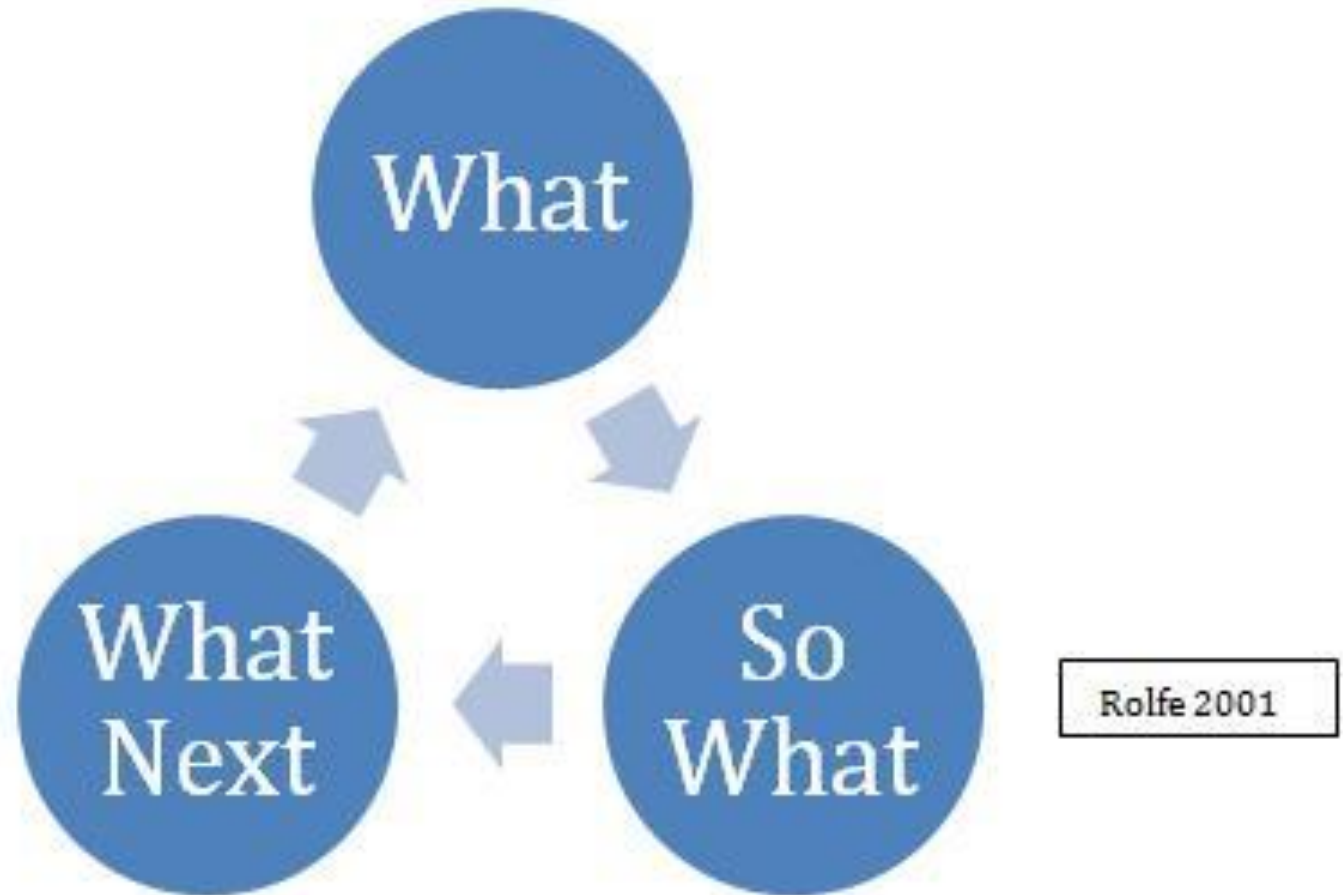


# GENERAL COMMENTS

- The sooner that you contact the Borrowers who will be impacted, the more time they will have to react
- Always document your files
- Follow-up, follow-up, follow-up
- Provide ideas and suggestions, but not advice
- Be proactive

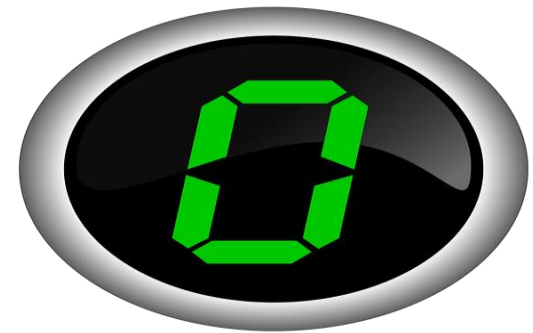
# Questions?

# SO NOW WHAT?



# THINGS TO DO WHILE WE WAIT FOR SBA GUIDANCE

- For loans approved since December 27, 2020:
  - Prepare 327 amendments for each of your 504 loans approved since December 27, 2020 to amend Paragraph B.1.b.(3) Administrative Costs to “CDC Processing Fee \$0”
  - Each Loan MUST have its own 327 request to change the CDC Processing Fee to \$0.
- Change the CDC Processing Fee in Ventures to \$0



# ABOUT THAT THIRD PARTY LENDER FEE...

- Don't collect it
  - If you did collect the TPL Fee, send it back to the TPL
  - If the Borrower paid the TPL Fee, then copy the Borrower so it can address the TPL Fee with its banker
- Mark the TPL Fee as N/A in the Servicing Agent Agreement
- In your cover sheet or cover spreadsheet to the CSA, mark the TPL fee as N/A because of the Economic Aid Act
- The CSA will adjust the amount of the fee to \$0 and nothing will be deducted from the CDC Processing Fee



# DEBT REFINANCE WITHOUT EXPANSION CHANGES

- The previous limit of each CDC's new debt refis without expansion to 50% of 504 dollars that the CDC lent during the previous fiscal year is eliminated
- The Qualified Debt must be 6 months old instead of 2 years old
- Job Opportunity Goal is either the usual job creation/retention goal or the "Alternate Job Retention Goal"
  - The Alternate Job Retention Goal includes counting part-time employees based on the hours worked (*i.e.*, full-time equivalent - FTEs)



# FULL-TIME EQUIVALENTS (FTEs)

## EXAMPLE:

- Average hours per each part-time employee: 25
- 25 divided by 40 hours/workweek is 0.63
- There are five part-time employees.  $5 \times 0.63 = 3.15$  FTE
- Add 3.15 to the FTEs for Alternate Job Retention goal for the 504 Project



# Questions?



# Thank you!

