



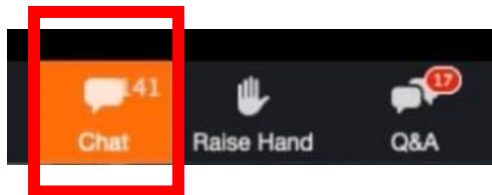
J.R. Bruno
& ASSOCIATES

ASK THE EXPERTS

February 4, 2021

Copy of Today's Presentation

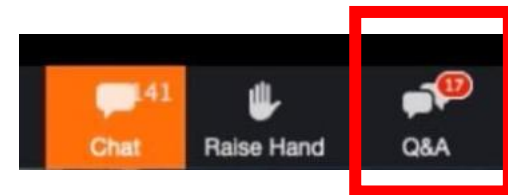
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PANELISTS

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 TOPIC

CARES ACT SECTION 1112 PAYMENTS

Sanford (Sandy) Mortan, Jan Garlitz & Richard Jeffrey

AVAILABILITY OF FUNDS



- All CARES Act § 1112 payments are dependent on the availability of funds
 - Payments are principal, interest and associated fees per the Loan's amortization schedule
- Congress appropriated \$3.5 billion for CARES Act § 1112 payments in the Economic Aid Act
- If funds are insufficient, then SBA will develop and submit a plan to Congress to proportionally reduce the number of months of payments
- § 1112 payments apply to 504, 7(a) and Community Advantage (CA) loans, and Microloans, but not Paycheck Protection Program (PPP) loans
- SBA has sent a letter to all Borrowers eligible to receive § 1112 payments

ELIGIBILITY FOR FIRST ROUND § 1112 PAYMENTS

- SBA Loan approved on or before September 27, 2020 regardless of when the Loan funds
 - EXAMPLE: 504 Loan approved May 9, 2019 for construction project. Because of the usual construction delays and then COVID-19, the 504 Loan finally closed and funded January 13, 2021
- SBA Loan must be in regular servicing
 - Closed and fully disbursed
 - Not moved into “liquidation status” – generally, any loan that is more than 120 days past due



FIRST ROUND § 1112 PAYMENTS

- SBA will begin making § 1112 payments with the first payment date after the Loan is fully disbursed or, if the 504 Loan was on deferment, beginning with the first month after the deferment ends
 - Deferments include both deferments for COVID-19-related unremedied substantial adverse changes using the COVID-19 Agreement at closing and other deferments granted by the CDC
- First Round payments must be completed before a Loan may receive any Second Round payments



SECOND ROUND § 1112 PAYMENTS

- SBA Loan must be in regular servicing for any Second Round § 1112 payments
- For 504 and 7(a), but not CA, Loans approved before March 27, 2020, there will be 3 months of Second Round payments
 - Not on deferment: SBA will make the 3 months of payments beginning with the later of: (1) first payment due on the Loan on or after February 1, 2021 or (2) first payment due on the Loan after First Round § 1112 payments end
 - On deferment when the deferment ends on or after February 1, 2021: SBA will make the 3 months of payments beginning with the later of (1) next payment due after the deferment ends or (2) first payment due on the Loan after First Round § 1112 payments end

SECOND ROUND § 1112 PAYMENTS *cont.*

- For 504 and 7(a), but not CA, Loans approved before March 27, 2020 in a hard-hit industry assigned the following NAICS Codes, SBA will make an additional 5 months of § 1112 payments immediately following the 3 months of Second Round § 1112 payments
- Hard-hit industries with the following NAICS Codes: 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812





CAN I CHANGE THE BORROWER'S NAICS CODE?

- Yes if justified
- If the 504 Loan has not yet closed, you must process a 327 action with the SLPC
- If the 504 Loan has closed and funded, you must process a servicing request with the applicable CLSC
- In either situation you must explain why the wrong NAICS Code was entered and what is the correct NAICS Code
 - Remember that if the Borrower has filed tax returns, etc., it has already listed its the NAICS Code on those documents – usually on the first page of a federal tax return, and it may be helpful to attach a copy of that page to demonstrate the correct NAICS Code.

CAN I CHANGE THE BORROWER'S NAICS CODE? *Cont.*

CAUTION: The CSA will be providing both OCRM and OIG with lists of 504 Loans receiving § 1112 payments by NAICS Code

Both OCRM and OIG will be checking on any misrepresentations as to NAICS Code

- If you are processing a 327 action or servicing request to change a NAICS Code, be very careful that you are not misrepresenting your Borrower's NAICS Code
- Both the SLPC and the applicable CLSC may turn down your request if the explanation for the change is inadequate or they believe there is misrepresentation – if necessary, say “NO” to your Borrower

CAN I CHANGE THE BORROWER'S NAICS CODE? *Cont.*

Example 1: Your Borrower operates a brewery which also serves sandwiches and other snacks (a “brew pub”) and has filed tax returns with NAICS Code 312120 for brewery. That NAICS Code is not one of the Codes that will receive the additional 5 months of § 1112 payments. Can you change the NAICS Code to 722511 for full-service restaurants or 722513 for a family or limited-service restaurant? **NO**

Example 2: Your Borrower operates a family restaurant and when your CDC entered the NAICS Code, it put 272513 in error. Can you change the NAICS Code to 722513? **YES!**

SECOND ROUND § 1112 PAYMENTS *cont.*

- For 504 and 7(a), but not CA, Loans approved during the period beginning on February 1, 2021 and ending on September 30, 2021, SBA will make 6 months of § 1112 payments beginning with the first payment due on the Loan after it moves into regular servicing
- For 504 and 7(a), but not CA, Loans approved during the period beginning on March 27, 2020 and ending on September 27, 2020, SBA may Second Round payments if there are sufficient funds



SECOND ROUND § 1112 PAYMENTS *cont.*

- No First or Second Round § 1112 payments for SBA Loans approved during the period beginning on September 28, 2020 and ending on January 31, 2021
 - Such Loans cannot be cancelled to reapply on or after February 1, 2021
 - Such Loans cannot be refinanced to obtain § 1112 payments



NO

COMMUNITY ADVANTAGE LOAN SECOND ROUND PAYMENTS

- For CA Loans approved before March 27, 2020, there will be 8 months of Second Round payments
 - Not on deferment: SBA will make the 8 months of payments beginning with the later of: (1) first payment due on the Loan on or after February 1, 2021 or (2) first payment due on the Loan after First Round § 1112 payments end
 - On deferment when the deferment ends on or after February 1, 2021: SBA will make the 8 months of payments beginning with the later of (1) next payment due after the deferment ends or (2) first payment due on the Loan after First Round § 1112 payments end

COMMUNITY ADVANTAGE LOAN SECOND ROUND PAYMENTS *cont.*

- For CA Loans approved during the period beginning on February 1, 2021 and ending on September 30, 2021, SBA will make 6 months of § 1112 payments beginning with the first payment due on the Loan after it moves into regular servicing
- For CA Loans approved during the period beginning on March 27, 2020 and ending on September 27, 2020, SBA may Second Round payments if there are sufficient funds
- No First or Second Round § 1112 payments for CA Loans approved during the period beginning on September 28, 2020 and ending on January 31, 2021
 - No cancelling to reapply on or after February 1, 2021
 - No refinancing to obtain § 1112 payments

\$9,000 MONTHLY LIMIT FOR SECOND ROUND § 1112 PAYMENTS

- No single monthly Second Round § 1112 payment of principal, interest and associated fees cannot exceed \$9,000
- Borrower is responsible for paying any monthly payment amount that exceeds \$9,000 (“excess due”) either (1) when the payment is due or (2) by entering into an agreement to pay the excess due under mutually agreeable terms
 - SBA will be issuing additional guidance on such agreements
- One SBA Loan Limit: A Borrower who has received, is receiving or will receive § 1112 payments for an SBA Loan approved beginning March 27, 2020 and ending September 27, 2020 cannot receive § 1112 payments for any other SBA Loan approved on or after February 1, 2021

PAYMENT PROCESS FOR § 1112 PAYMENTS FOR 504 LOANS

- For 504 Loans serviced by CDCs, SBA will make the § 1112 payments by the 15th of each month to the CSA
- **While § 1112 payments are being made, the CSA will not make any ACH debits to any Borrower's account**
- What does this mean for CDCs and 504 Borrowers?
 - Unless the Borrower is receiving § 1112 payments, the Borrower will need to make its regular monthly payment
 - Borrowers will need to make Catch-up Plan payments
 - During Second Round § 1112 payments, Borrowers will need to make payments of any excess due over \$9,000
- Payment must be by check or wire received by the CSA by the 15th of the month

NOTIFY IMPACTED BORROWERS

- All Borrowers (except those receiving First Round § 1112 payments) are impacted by these changes - make sure your Borrowers are aware of the changes to avoid issues down the road
- Any 504 Loan with a monthly Amortization Schedule payment over \$9,000 will be impacted
- Any 504 Borrower on a catch-up plan also is impacted regardless of the Amortization Schedule or § 1112 payment amounts



DETERMINING WHICH 504 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

impact

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 CAREENHILL 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 SUPPLY	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 INVESTING, 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 LEARNING CENTER, 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	

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



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 Second Round § 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 Borrower is responsible for paying the “excess due” over \$9,000 unless Borrower and CDC/SBA enter into an agreement for future payment of the excess due (e.g., under the Economic Aid Act, converting the excess due to 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)
 - Excess due amount: **\$1,000.00** (\$10,000.00 minus \$9,000.00)
 - Borrower needs to send \$2,500.00 by check or wire

ENDING DEFERMENTS TO GET § 1112 PAYMENTS

- If a 504 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
- CDC must notify the CSA that the non-COVID-19 Agreement deferment has ended by the **4th business day of the month**



NO PARTIAL PAYMENTS

- Because partial prepayments cannot be made on 504 Loans, if the Borrower makes any regular monthly loan payments (not for catch-up or excess due amounts), in whole or in part, while SBA is making § 1112 payments, the payment must be returned to the Borrower unless used to cover past due amounts
- If the Debenture has been purchased and returned to regular servicing and the Borrower makes any regular monthly loan payments, the CDC must inform the Borrower that it has the option of having the payment returned or applying it to reduce the Loan balance after application of SBA's § 1112 payment

NO LATE FEES PREPAYMENTS IN FULL

- While SBA is making § 1112 payments, Lenders cannot charge a Late Fee even if the Borrower fails to make timely catch-up or excess due payments
- For any SBA Loan that is scheduled to be paid in full, the last § 1112 payment that SBA will make is the monthly loan payment due prior to the date of prepayment



GENERAL COMMENTS

- The sooner that you contact the Borrowers who will be impacted, the more time they will have to react
- Pay attention to timing especially with CLSC or CSA dates
- Always document your files
- Follow-up, follow-up, follow-up
- Provide ideas and suggestions, but not advice
- Be proactive

Questions?

If we're unable to answer your question(s) during the webinar, please email us at jrbruno@jrbrunoassoc.com

Thank you!

