



May 31, 2022

*Via Electronic Mail*

The Honorable Isabella Casillas Guzman  
Administrator  
U.S. Small Business Administration  
409 3<sup>rd</sup> Street, SW  
Washington, D.C. 20416

Re: Implementing the Paycheck Protection Program

Dear Administrator Guzman,

The Bank Policy Institute,<sup>1</sup> the Consumer Bankers Association,<sup>2</sup> and the American Bankers Association<sup>3</sup> appreciate the ongoing efforts of the U.S. Small Business Administration (“SBA”) to help lenders and their customers navigate the Paycheck Protection Program (PPP), including with respect to the forgiveness and guaranty processes. We are writing to seek additional clarity for lenders on several issues related to these processes.

First, we note that the following message was distributed on April 8, 2022, via the SBA’s Summit portal, stating the following:

**Dear Lenders,**

Many lenders have expressed concern about impending maturity dates and whether SBA will still consider honoring the guaranty if the loan matures. The CFR states the following:

---

<sup>1</sup> BPI is a nonpartisan public policy, research and advocacy group, representing the nation’s leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation’s small business loans and are an engine for financial innovation and economic growth.

<sup>2</sup> The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

<sup>3</sup> The American Bankers Association is the voice of the nation’s \$24.0 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.9 trillion in deposits and extend \$11.4 trillion in loans.

## 13 CFR 120.524 (a)(8)

- a. SBA is released from liability on a loan guarantee (in whole or in part, within SBA's exclusive discretion), if any of the events below occur:
  8. The Lender has failed to request that SBA purchase a guarantee within 180 days after maturity of the loan. However, if the Lender is conducting liquidation or debt collection litigation in connection with a loan that has matured, SBA will be released from its guarantee only if the Lender fails to request that SBA purchase the guarantee within 180 days after the completion of the liquidation or debt collection litigation;

For the purposes of PPP loans, SBA considers pending forgiveness decisions to be active liquidation, since the lender is effectively waiting to receive funds to pay the loan in full. If the SBA decision is to decline forgiveness or only partially forgive the loan, the lender will then have 180 days from the date of the forgiveness decision to request that SBA honor the guaranty.

Sincerely,

Office of Capital Access  
U.S. Small Business Administration

We appreciate this guidance, and we respectfully request that the SBA further clarify that the SBA also will consider a pending OHA appeal to be "active liquidation" and that the lender will have 180 days from the date of the forgiveness decision or the date of the OHA Appeal decision, where relevant, to request that the SBA honor the guaranty. Therefore, we request that the last paragraph of the guidance be amended to read:

For the purposes of PPP loans, SBA considers pending forgiveness decisions (including pending OHA Appeals, if applicable) to be active liquidation, since the lender is effectively waiting to receive funds to pay the loan in full. If the SBA decision is to decline forgiveness or only partially forgive the loan, the lender will then have 180 days from the date of the forgiveness decision (or OHA Appeal decision, if applicable) to request that the SBA honor the guaranty.

This is consistent with the SBA's July 30, 2021, Interim Final Rule in which the SBA stated that "a timely appeal by a PPP borrower of a final SBA loan review decision extends the deferment period of the PPP loan until OHA's decision becomes final under 13 CFR 134.1211."<sup>4</sup> In addition, the OHA Notice and Order provided to borrowers after filing a timely appeal states that "Appellant must provide their lender with a copy of the appeal to extend the deferment period of the PPP loan until OHA's decision becomes final. See 13 C.F.R. § 134.1204(d)."

However, we also note that Procedural Notice 5000-812316 provides that a lender may request a guaranty purchase 60 days after a borrower has filed an appeal with the SBA'S Office of

---

<sup>4</sup> 86 Fed. Reg. 40921, 40925 (July 30, 2021), available at: [2021-16358.pdf \(govinfo.gov\)](https://www.govinfo.gov/2021-16358.pdf).

Hearings and Appeals (OHA).<sup>5</sup> Lenders are concerned that this guidance could cause confusion about the appropriate timing to file a guaranty purchase.

Therefore, lenders would greatly benefit from guidance specifically addressing this situation. In particular, lenders request that SBA issue guidance that for loans that remain in deferment, including because a timely appeal to OHA was filed, the 180-day timeline to file a guaranty purchase request upon maturity will be tolled until the loan exits deferment, which would occur, for example, when a forgiveness or appeal decision is finalized by the SBA. Lenders also would retain the option to request a guaranty purchase 60 days after a borrower has filed an appeal with the SBA'S Office of Hearings and Appeals. We also request that the language included in the OHA'S Notice and Order transmitted to borrowers after the filing of an appeal be amended to reflect this guidance more clearly.

We also note that the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116-142) amended the CARES Act to provide a minimum maturity of five years for all PPP loans made on or after the date of enactment of the Flexibility Act (June 5, 2020), and permits lenders and borrowers to extend the original two-year maturity date of earlier PPP loans by mutual agreement, without involvement of the SBA or any other party. However, section 8(B) of the PPP Lender Agreement provides as follows: "The guaranty of any covered loan will be automatically terminated if Lender does not **submit to SBA** a demand to purchase the guaranty **or a request to extend the maturity within one year after the maturity of the note**" (emphasis added). We respectfully request that the SBA confirm our assumption that lenders (with mutual consent of the borrower) may modify the term of the loan at any time prior to the guaranty claim submission without seeking approval of the SBA, even if this modification occurs on or after maturity.

Finally, as we have previously communicated, lenders have little visibility into the OHA appeals process and are reliant on the borrower to keep the lender abreast of relevant developments in that regard, including that an appeal has been filed in the first place and a final decision by the OHA. Lenders request that they be copied on the OHA'S Notice and Order transmitted to borrowers and on the final determination made by OHA so that lenders are able to accurately determine if additional forgiveness funds are expected, when deferment should end, and/or when they must file a guaranty purchase, where relevant, after such final determination.

\* \* \* \* \*

---

<sup>5</sup> SBA Procedural Notice 5000-812316, "SBA Guaranty Purchases and Lender Servicing Responsibilities for PPP," (July 15, 2021) at 4, available at: [SBA Procedural Notice 5000-812316 PPP Guaranty Purchase Charge-Off and Lender Servicing Responsibilities](#).

BPI, ABA, and CBA would appreciate the opportunity to discuss the above-referenced matters with you if you have any questions. If so, please contact Paige Paridon of BPI by phone at (703) 887-5229 or by email at [Paige.paridon@bpi.com](mailto:Paige.paridon@bpi.com).

Bank Policy Institute

American Bankers Association

Consumer Bankers Association

cc: Patrick Kelley, Associate Administrator – Office of Capital Access  
U.S. Small Business Administration

John A. Miller, Deputy Associate Administrator – Office of Capital Access  
U.S. Small Business Administration

Dianna L. Seaborn, Director – Office of Financial Assistance  
U.S. Small Business Administration

Kimberly P. McLeod, Assistant Administrator – Office of Hearings and Appeals  
U.S. Small Business Administration

Katherine Reilly, Attorney Advisor  
U.S. Department of the Treasury

Antonio J. White  
Deputy Assistant Secretary, Community Engagement  
U.S. Department of the Treasury