



SBA Procedural Notice

TO: All SBA Employees and Certified
Development Companies

CONTROL NO.: 5000-20010

EFFECTIVE: 03/25/2020

SUBJECT: 504 Certifications of No Adverse
Change for April, May and June, 2020
Debenture Sales during the COVID-19
Emergency

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, Territories, and the District of Columbia. The purpose of this Notice is to provide guidance to Certified Development Companies (CDCs) during the COVID-19 emergency with respect to the certifications of No Adverse Change that are required before 504 debenture sales. This Notice applies to the debenture sales scheduled for April, May and June, 2020. **For a loan to be included in the April 15, 2020 debenture sale, a CDC that has already submitted a debenture closing package to SBA must comply with the additional procedures in this Notice by noon on Friday, April 3, 2020.** Otherwise, the debenture issuance will be deferred until the May 13, 2020 debenture sale, and the CDC will have until April 23, 2020 (the May CSA Cut-Off Date) to comply.

Under 13 CFR 120.892, the following certifications are required before a 504 loan closing:

- The Borrower (and Operating Company if Borrower is an Eligible Passive Company (EPC)) must certify to the CDC that there has been no unremedied substantial adverse change in its financial condition or its ability to repay the 504 loan since the date of application. This certification is made by the Borrower (and Operating Company) in SBA Form 2289.
- The Interim Lender must certify to the CDC that it has no knowledge of any unremedied substantial adverse change in the condition of the small business since the application to the Interim Lender. This certification is made by the Interim Lender in SBA Form 2288.
- The CDC must opine and certify, before the 504 loan closing, that to the best of its knowledge there has been no unremedied substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application to SBA. This certification is made by the CDC in SBA Form 2101.

With the COVID-19 emergency, the Borrower's (or Operating Company's) financial condition or its ability to repay the 504 loan may be experiencing a substantial adverse change as a direct result of the Federal, State and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, are being implemented nation-wide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even sheltering-in-place, are being implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores and other businesses. This unexpected and sudden change in national economic conditions, which is beyond the Borrower's control, presents a unique circumstance and one which SBA hopes will be only a temporary challenge for all SBA Borrowers, including approved 504 applicants who have not yet closed on their 504 loan.

Accordingly, SBA has determined that, for the April, May and June, 2020 debenture sales for 504 loans where the Authorization was issued prior to March 1, 2020, CDCs may proceed with the debenture sale under the following conditions and requirements:

- 1) No Substantial Adverse Change. Based on the certifications by the Interim Lender and the Borrower (and Operating Company if Borrower is an EPC), and based on its own consideration, the CDC must determine for each loan before the debenture sale whether the COVID-19 emergency is the immediate and direct cause of a substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since the submission of the loan application to SBA. If the CDC concludes there is no substantial adverse change as a result of the COVID-19 emergency, the CDC would complete SBA Form 2101 with no changes (assuming that there has been no unremedied substantial adverse change in the Borrower's ability to repay for any other reason), and must document and retain its determination in its loan file.
- 2) Substantial Adverse Change. If the CDC concludes that the COVID-19 emergency is the immediate and direct cause of a substantial adverse change in the Borrower's ability to repay the 504 loan, the CDC, the Interim Lender, the Third Party Lender and the Borrower (and Operating Company, if applicable) may continue with the 504 debenture sale, provided that the CDC, the Interim Lender, the Third Party Lender, and the Borrower (and Operating Company, if applicable) execute the attached COVID-19 Substantial Adverse Change Remedy Certification and Agreement (COVID-19 Agreement), in addition to SBA Forms 2101, 2287, 2288 and 2289.

The COVID-19 Agreement contains certifications and agreements by all parties regarding, among other things, the remedial measures that must be taken to address the Borrower's substantial adverse change as a result of the COVID-19 emergency, including required deferments of the 504 loan and the Third Party Loan, that will assist the Borrower (and Operating Company, if applicable) in improving its cash flow so that it will be able to make its payments on the 504 loan after the required deferments described below end. These remedial measures must include:

- (a) Immediately following the debenture sale, the CDC must grant a deferment on the 504 loan of all principal and interest for at least 90 days and up to 6 months;
- (b) Immediately following the debenture sale, the Third Party Lender must grant a deferment to the Borrower on the Third Party Loan of all principal and interest for at least as long as the period of deferment granted by the CDC on the 504 loan;
- (c) The Interim Lender, Third Party Lender and the CDC must agree to make a good faith effort to assist the Borrower with additional remedial measures, including, but not limited to, assisting the Borrower with locating and applying for other forms of financial assistance, including, but not limited to, SBA Economic Injury Disaster Loans (EIDL) and other loans or grants available from Federal, State or local government agencies and entities; and
- (d) The Borrower (and Operating Company, if applicable) must agree to use its best efforts to seek out, apply for, and obtain available sources of financial assistance, as necessary to continue to operate.

The form of COVID-19 Agreement is attached to this Notice. A copy of the fully-executed COVID-19 Agreement must be submitted to the appropriate SBA District Counsel for review with the closing package. **For the April 15, 2020 debenture sale, the Agreement must be submitted to SBA District Counsel for review by noon on Friday, April 3, 2020.** This Notice does not extend the March 26, 2020 CSA Cut-Off Date for the submission of all other closing documents for the April sale. For the April sale, scanned signatures on the COVID-19 Agreement are acceptable and the Agreement may be signed in counterparts.

Questions on this Notice may be directed to the Lender Relations Specialist in the local SBA Field office. The local SBA Field office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

William M. Manger
Associate Administrator for Capital Access
Office of Capital Access

Attachment

COVID-19 SUBSTANTIAL ADVERSE CHANGE REMEDY CERTIFICATION AND AGREEMENT

In connection with SBA 504 Loan Number _____, the Certified Development Company (CDC), Interim Lender, Third Party Lender, Borrower, and Operating Company (if applicable) listed below certify and agree as follows:

1. The parties have signed SBA form certifications and agreements in connection with this 504 loan closing, including certifications regarding whether there has been an unremedied substantial adverse change in the financial condition of the Borrower (and Operating Company, if applicable). See SBA Forms 2288 (Interim Lender Certification), SBA Form 2287 (Third Party Lender Agreement), SBA Form 2289 (Borrower and Operating Company Certification), and SBA Form 2101 (CDC Certification). This document amends those certifications and agreements.
2. The CDC has concluded that the national emergency arising from the ongoing Coronavirus Disease 2019 (COVID-19) pandemic is the immediate and direct cause of a substantial adverse change in the Borrower's (and/or Operating Company's, if applicable) ability to repay the 504 loan, and remedial measures are necessary to address the substantial adverse change.
3. Immediately following the debenture sale, CDC agrees to provide the Borrower (and Operating Company, if applicable) with a deferment of the 504 loan, including all principal and interest, for at least 90 days and up to 6 months after the debenture sale to assist the Borrower (and Operating Company, if applicable) in improving its cash flow so that it will be able to make payments on the 504 loan after the period of deferment ends.
4. Immediately following the debenture sale, the Third Party Lender agrees to provide the Borrower (and Operating Company, if applicable) with a deferment on the Third Party Loan, including all principal and interest, for at least as long as the period of deferment granted by the CDC on the 504 loan. The Third Party Lender agrees that the Borrower's failure to make any payment under the Third Party Loan during the period of deferment shall not constitute a default (or Event of Default) under the Third Party Loan documents or applicable law and the Third Party Lender agrees not to exercise any rights or remedies that may otherwise be available as a result of the failure to make any such payments during the deferment period. Notwithstanding the foregoing, all other terms and conditions under the Third Party Loan documents and the Third Party Lender Agreement shall remain in full force and effect.
5. The CDC, Interim Lender and Third Party Lender agree to make a good faith effort to assist the Borrower (and Operating Company, if applicable) with additional remedial measures including, but not limited to, assisting the Borrower (and Operating Company, if applicable) with locating and applying for other forms of financial assistance, including, but not limited to, an SBA Economic Injury Disaster Loan (EIDL) and other loans or grants available from Federal, State or local government agencies and entities.

6. Borrower (and Operating Company, if applicable) agree to use its best efforts to seek out, apply for, and obtain available sources of financial assistance, as necessary to continue to operate.
7. Borrower (and Operating Company, if applicable) has not filed a bankruptcy petition or any other insolvency proceeding as of the date of this agreement.
8. Interim Lender certifies that the Borrower (and Operating Company, if applicable) are current on their payments to the Interim Lender and not otherwise in default on the Interim Loan.
9. This document may be signed in counterparts.

INTERIM LENDER

By: _____
Title: _____

Date

THIRD PARTY LENDER

By: _____
Title: _____

Date

BORROWER:

OPERATING COMPANY:

BY: _____
TITLE: _____
DATE: _____

BY: _____
TITLE: _____
DATE: _____

CERTIFIED DEVELOPMENT COMPANY

BY: _____
TITLE: _____
DATE: _____