



SBA Procedural Notice

TO: All SBA Employees and 7(a) Lenders

CONTROL NO.: 5000-20011

SUBJECT: Guidance Regarding No Adverse Change Certifications on 7(a) Loans during the COVID-19 Emergency

EFFECTIVE: 3/26/2020

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 7(a) Lenders during the COVID-19 emergency with respect to the certifications of “no adverse change” required by Loan Program Requirements (as defined in 13 CFR 120.10) in connection with 7(a) loans.

Loan Program Requirements:

As set forth in SOP 50 10 5(K), Subpart B, Chapter 7, Paragraph IV.G, as part of the terms and conditions of the Authorization, the Lender must obtain certain certifications and agreements from the Borrower(s) (Operating Company (OC) and Eligible Passive Company (EPC), if applicable) prior to disbursement of loan proceeds. One of the required certifications is that there has been no adverse change in the Borrower’s (and OC’s) financial condition, organization, operations or fixed assets since the date the Loan Application was signed.

In addition, SBA Form 1050, Settlement Sheet, includes a certification by the Lender and the Borrower that there has been no unremedied adverse change in the Borrower’s or OC’s financial condition, organization, management, operations or assets since the date of application that would warrant withholding or not making a disbursement on the loan. Further, at the time of each subsequent disbursement on the loan, the Lender, by disbursing the loan proceeds, and the Borrower by receiving them, are deemed to certify that the prior certifications are true with respect to each and every disbursement made.

Adverse Change Considerations:

With the COVID-19 emergency, the Borrower’s (or Operating Company’s) financial condition or its ability to repay the 7(a) 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 nationwide 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 7(a) applicants who have not yet closed on their 7(a) loan.

As a result of the COVID-19 emergency, borrowers with 7(a) loans that have been approved but not yet closed or loans that have not been fully disbursed, may have experienced an adverse change in financial condition. Lenders may consider disbursing or continuing to disburse such loans if the Lender has determined that the small business concern has the ability to remedy the adverse change under the following conditions:

- If the borrower is fully operational, the Lender must work with the small business concern to verify that the impacted small business concern has a plan to remedy the adverse change, as demonstrated by, among other things, cash flow projections and proforma financial statements, and which may include the effect of any future deferment. The Lender must document in the loan file the Lender's rationale for disbursing or continuing to disburse the loan.
- If the borrower is partially operational, the Lender must determine if the adverse change since the date of application or of the last disbursement cannot be remedied and is significant enough to warrant withholding or not making additional disbursements as set forth in SOP 50 10 5(K), Subpart B, Ch. 7, Para. IV. If not, the Lender must follow the steps for a fully operational business above.
- If the borrower is not operational, no disbursement should be made until the borrower begins operating again.
- In all cases, Lenders are encouraged to assist 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. For more information on SBA's EIDL loans, visit the SBA Disaster website at <https://disasterloan.sba.gov/ela>.

Lenders must analyze each 7(a) loan in a commercially reasonable manner, consistent with prudent lending standards. Unless otherwise stated in this Notice all requirements for continued borrower creditworthiness remain in effect.

Lender Reporting Requirement

In accordance with the Debt Collection Improvement Act of 1996, Lenders are required to report information to the appropriate credit reporting agencies whenever they extend credit via an SBA loan. Thereafter, the Lender should continue to routinely report information concerning servicing, liquidation, and charge off activities throughout the life cycle of the loan, as specified in the current version of SOP 50 57, 7(a) Loan Servicing and Liquidation.

Questions

Questions related to this Notice should 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>.

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