



SBA Procedural Notice

TO: All SBA Employees and Certified Development Companies

CONTROL NO.: 5000-20099

SUBJECT: Temporary 504 Loan Program Change Authorizing Certified Development Companies to Allow the Refinancing of Third Party Loans

EFFECTIVE: February 26, 2021

Section 328(c) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted December 27, 2020 (Pub. L. 116-260), authorizes Certified Development Companies (CDCs) to allow, during the 1-year period beginning on December 27, 2020, the refinancing of the Third Party Loan on an existing 504 Project in an amount that, when combined with the outstanding balance on the subordinate 504 loan, is not more than 90 percent of the total loan to value. The lender refinancing the Third Party Loan may be the existing Third Party Lender or a different private lender.

The authority of a CDC (both PCLP and non-PCLP CDCs) to unilaterally allow the refinancing of the Third Party Loan is in effect for the 1-year period following December 27, 2020 and may be exercised under the following conditions:

1. The refinancing of the Third Party Loan on an existing 504 Project is in an amount that, when combined with the outstanding balance on the 504 Loan, is not more than 90 percent of the total loan to value, as evidenced by an Appraisal (as defined in SOP 50 55) that the CDC must retain in its loan file. The Third Party Lender must provide the Appraisal to the CDC free of charge (except for reasonable charges for photocopies). The Borrower may use the proceeds of such refinancing to support its business operating expenses, and the proceeds may not be used for personal expenses. A CDC may allow a Third Party Loan on an existing 504 Project to be refinanced only once under the authority of Section 328(c) of the Economic Aid Act.
2. The CDC must set out the terms of the transaction in a properly executed Subordination Agreement. The form of the Subordination Agreement that the CDCs must utilize for the refinancing of the Third Party Loan can be found for each State using the following link <https://www.sba.gov/document/support-504-servicing-subordination-agreements>. To obtain the authority to execute the Subordination Agreement on behalf of SBA, the CDC must

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EXPIRES: 2/1/22

SBA Form 1353.3 (4-93) MS Word Edition; previous editions obsolete

Must be accompanied by SBA Form 58

submit a power of attorney document to the appropriate CLSC for signature. The CDC must properly record both the Subordination Agreement and the Power of Attorney.

3. The CDC and the Third Party Lender that is refinancing the existing Third Party Loan must execute the Third Party Lender Agreement, SBA Form 2287, which the CDC must properly record.
4. CDCs must use their CDC counsel (or other appropriate counsel) in the drafting, reviewing, and recording of the Subordination Agreement, Third Party Lender Agreement, Power of Attorney, and any other necessary documents related to the refinancing of the Third Party Loan. Costs incurred by the CDC in connection with the drafting, reviewing and recording of the documents may be paid from the proceeds of the refinancing of the Third Party Loan or by the Borrower.
5. The following conditions set forth in SOP 50 55 related to the subordination of the 504 Loan to the new Third Party Loan continue to apply:
 - a. The Third Party Loan should be Seasoned (as defined in SOP 50 55) when the amount of the new Third Party Loan exceeds the outstanding amount of the existing Third Party Loan;
 - b. The Borrower should have a satisfactory credit history;
 - c. The analysis required by Chapter 6 of SOP 50 55 for Borrower servicing requests must include the reason for the subordination and a description of how the new money will be used. This analysis, in addition to any other documentation required by Chapter 6 of SOP 50 55 in connection with this servicing request, must be retained by the CDC in its loan file;
 - d. The Borrower must demonstrate the ability to repay all of the obligations from the operations of the operating concern on which the loan is based (according to the terms of the loan agreements), on the full amount of the loans outstanding after the proposed subordination;
 - e. The subordination must be limited to a specific amount and not extend to future advances; and
 - f. The subordination will not otherwise adversely affect the priority of the lien securing the 504 Loan. For example, intervening junior lienholders, if any, must not be able to claim priority over the lien securing the 504 Loan as a result of the subordination.
6. Any refinancing of a Third Party Loan that is allowed by a CDC under Section 328(c) of the Economic Aid Act and this Notice is subject to review by SBA's Office of Credit Risk Management. In accordance with 13 CFR 120.938(b), SBA will look to the CDC for the entire amount of the Debenture in the event of default in the case of fraud, negligence, or misrepresentation by the CDC.

Expiration Date

The loan that refinances the Third Party Loan of an existing 504 Project under the authority of Section 328(c) of the Economic Aid Act must be closed and funded no later than December 26, 2021.

Questions

Questions concerning this Notice may be directed to the Lender Relations Specialist in the [local SBA Field Office](#).

John A. Miller
Acting Associate Administrator
Office of Capital Access