



# SBA Procedural Notice

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**TO:** All SBA Employees and SBA 7(a) Lenders

**CONTROL NO.:** 5000-808582

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

**EFFECTIVE:** April 2, 2021

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On March 26, 2020, SBA issued [Procedural Notice 5000-20011, “Guidance Regarding No Adverse Change Certifications on 7\(a\) Loans during the COVID-19 Emergency.”](#) The purpose of this Notice is to update and extend the previous 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 (including Community Advantage (CA) Pilot Program loans).

## **Loan Program Requirements**

As set forth in SOP 50 10 6, Part 2, Section B, Chapter 5, Paragraph D.7., 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 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 disbursement of 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 every disbursement made.

## **Adverse Change Considerations**

With the continuation of the COVID-19 emergency, the Borrower’s (or OC’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 have been taken to

minimize the public's exposure to the virus. These measures, some of which are government-mandated, were implemented nationwide and included closures of restaurants, bars, gyms, and retail stores. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others and sheltering-in-place orders, were implemented, resulting in a dramatic decrease in economic activity as the public avoided malls, retail stores and other businesses. This unexpected and sudden change in the national economic condition, which was beyond the Borrower's control, presented a unique circumstance, which SBA had hoped would only be a temporary challenge for all SBA Borrowers, including approved 7(a) applicants who have not yet closed on their 7(a) loans.

With the development and availability of the COVID-19 vaccines and the lifting of some, but not all, of the COVID-19 restrictions, the United States and its territories have begun to see improvements in economic conditions. However, many restrictions have not yet been removed and the economic situation has not yet returned to previous levels across much of the U.S. As a result, SBA is extending this guidance through December 31, 2021.

Lenders may continue to consider disbursing or continuing to disburse 7(a) loans if the Lender has determined that the small business concern can remedy the adverse change under the following conditions:

1. 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.
2. 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 10 6, Part 2, Section B, Chapter 5, Paragraph D. If not, the Lender must follow the steps for a fully operational business above.
3. If the borrower is not operational, no disbursement should be made until the borrower begins operating again.
4. 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), SBA Paycheck Protection Program (PPP) Loans, and other loans or grants available from SBA and other Federal, State, or local government agencies and entities. For more information on SBA's COVID-19 relief options, visit SBA's website at <https://www.sba.gov/page/covid-19-guidance-resources>.
5. With the enactment of Section 325 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) (Pub. L. 116-260), enacted December 27, 2020, Congress extended the availability of the debt relief provided under Section 1112 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) for certain 7(a) loans that were approved on or before September 27, 2020, and for 7(a) loans approved on or after February 1, 2021 and through September 30, 2021. In making the determination of whether

the Borrower (or OC) has experienced an unremedied adverse change, Lenders must consider whether it is likely that the Borrower (or OC) will have the ability to timely make the loan payments due after the period of Section 1112 payments ends. In addition, for certain loans that will have monthly payments in excess of \$9,000 per month, Lenders must consider whether it is likely that the Borrower (or OC) will have the ability to timely pay the amount exceeding \$9,000 during the period of Section 1112 payments. Under the extension of the debt relief program provided under the Economic Aid Act, borrowers may be eligible for 3, 5 or 8 months of Section 1112 payments, depending on when the loan was approved, fully disbursed, and whether borrower's business is in a hard-hit industry as defined under the Economic Aid Act or a Community Advantage loan. Lenders must review SBA Procedural Notices 5000-20079, "Guidance on the Implementation of the Extension of the Section 1112 Debt Relief Program for the 7(a) and 504 Loan Programs, as Authorized by Section 325 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act" (effective January 19, 2021), and 5000-20095, "Adjustment to Number of Months of Section 1112 Payments in the 7(a), 504 and Microloan Programs Due to Insufficiency of Funds" (effective February 16, 2021), to determine the number of months of Section 1112 payments for which the borrower will be eligible and whether the \$9,000 cap applies to the loan in question.

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

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