



# SBA Procedural Notice

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**TO:** All SBA Employees and Certified Development Companies

**CONTROL NO.:** 5000-811261

**SUBJECT:** Additional Guidance on 504 Certifications of No Adverse Change for July 2021 Debenture Sales during the COVID-19 Emergency and Reminder About Catch-up Plans

**EFFECTIVE:** May 14, 2021

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The purpose of this Notice is to announce that, for the 504 loans that will be funded through the debenture sales scheduled in July 2021, the “COVID-19 Substantial Adverse Change Remedy Certification and Agreement (Rev May 2020)” (COVID-19 Agreement) will continue to be available when the Certified Development Company (CDC) has concluded that there has been a substantial adverse change in the Borrower’s ability to repay the Project financing since the submission of the 504 loan application to SBA.

In addition, SBA wants to remind CDCs that, for all 504 loans granted a deferment under any COVID-19 Agreement, the CDC must contact SBA’s Central Servicing Agent (CSA) at least one month before the end of the deferment period to coordinate the development of the catch-up plan. The CDC must contact the Borrower before the deferment period ends to determine the length and the other terms of the catch-up plan. (To efficiently handle the large volume of loans that are closed each month, SBA has instructed the CSA to initially default the 504 loans that are granted deferments under the COVID-19 Agreement to a 5-year catch-up plan.)

SBA first announced the availability of the COVID-19 Agreement in SBA Procedural Notice 5000-20010, effective March 25, 2020, for the 504 loans that were funded through the April, May and June 2020 debenture sales. With the adverse economic effects of the pandemic continuing through the end of 2020 and into 2021, SBA has continued to make the COVID-19 Agreement available for all subsequent debenture sales. See SBA Procedural Notices 5000-20027 (July, August, and September 2020), effective May 18, 2020, SBA Procedural Notice 5000-20044 (October, November and December 2020), effective September 4, 2020, and SBA Procedural Notice 5000-20064 (January, February and March 2021). Most recently, SBA continued to make the COVID-19 Agreement available for the 504 loans funded through the April, May and June 2021 debenture sales. See SBA Procedural Notice 5000-20098 effective February 26, 2021. In addition, SBA issued SBA Procedural Notice 5000-808433 on March 31,

2021, “Second Extension of Guidance on Underwriting 504 Loans during the COVID-19 Pandemic” in which SBA provided guidance that will be in effect through June 30, 2021 on the additional analysis that CDCs should conduct in underwriting 504 loans during the pandemic.

Due to the decreased use of the COVID-19 Agreement over the past few months, SBA believes that it is time to wind down the use of the Agreement, with its immediate 90-day deferments, to address adverse change. A significant number of small businesses that moved to a remote working environment, temporarily suspended operations, laid-off a significant percentage of their workforce, or shut down completely are beginning to re-open and re-staff. As recovery from the COVID-19 pandemic and increased vaccination in the United States gains traction, the restrictions put in place by national, state and local governmental authorities are currently beginning to ease. Accordingly, with economic conditions improving, SBA has decided that it is appropriate to extend the COVID-19 Agreement for one month at this time, through the July 2021 debenture sale. SBA will continue to monitor economic conditions and the easing of COVID-19 restrictions to determine if any further extensions are needed. For the July 2021 debenture sale, CDCs may proceed with the debenture sale under the conditions and requirements set forth below.

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 Project financing 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 completes SBA Form 2101 with no changes (assuming that there has been no unremedied substantial adverse change in the Borrower’s ability to repay the Project financing for any other reason), and must document and retain its determination in its loan file. The CDC must notify SBA District Counsel of its conclusion when it submits the closing package to SBA District Counsel.

Congress has extended the availability of debt relief under Section 1112 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as amended by Section 325 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted December 27, 2020, Pub. L. 116-260, for the 504 loans identified below. Under the funding plan that SBA submitted to Congress in accordance with Section 1112(c)(7)(B) of the CARES Act (See SBA Procedural Notice 5000-20095, effective February 16, 2021), SBA will make Section 1112 payments for the 504 loans funded through the July 2021 debenture sales as follows:

- For a 504 loan that was approved on or before September 27, 2020, SBA will make Section 1112 payments for a 3-month period;
  - In addition, if this loan was approved before March 27, 2020, SBA will make Section 1112 payments for an additional 2-month period beginning immediately after the 3-month period described in the first bullet above, for a total of 5 months of Section 1112 payments, except that:

- If the loan was approved before March 27, 2020 and the Borrower is assigned a certain code of the North American Industry Classification System (NAICS), SBA will make Section 1112 payments for an additional 5-month period beginning immediately after the 3-month period described in the first bullet above, for a total of 8 months of Section 1112 payments. To be eligible for this 8-month period of Section 1112 payments, the Borrower must be assigned, according to SBA records, a NAICS code beginning with 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812.
- For a 504 loan approved on or after February 1, 2021, SBA will make Section 1112 payments for a 3-month period; and
- For a 504 loan that was approved beginning on September 28, 2020 and ending on January 31, 2021, SBA will make no Section 1112 payments.

SBA has considered the availability of the Section 1112 payments for the 504 loans identified in the bullets above but, with the possibility that some Borrowers will not have the immediate financial ability to timely pay the amounts due on the Third Party Loan during the authorized periods of section 1112 payments described above, the CDC, in making the determination of substantial adverse change, must consider whether it is likely that the Borrower (or Operating Company) will have the ability, during the authorized period (i.e., 3, 5 or 8 months), to timely make the payments that will be owed to the Third Party Lender for the Third Party Loan financing the Borrower's 504 Project. If the Borrower is not likely to have that ability, the CDC must follow the procedures in paragraph 2 below.

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 Project financing, the CDC, the Interim Lender, the Third Party Lender and the Borrower (and Operating Company, if applicable) (collectively referred to as the parties) may continue with the 504 debenture sale, provided that the parties execute the COVID-19 Substantial Adverse Change Remedy Certification and Agreement (Rev May 2020) (referred to as "COVID-19 Agreement (Rev May 2020)"), in addition to SBA Forms 2101, 2287, 2288 and 2289. The COVID-19 Agreement (Rev May 2020) 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. The section 1112 payments for the loans that are eligible to receive the payments will begin after the deferment period granted under the COVID-19 Agreement (Rev May 2020) and these payments will be made in accordance with applicable SBA Procedural Notices, including SBA Procedural Notice 5000-20079. The remedial measures under the Agreement must include:

- a. Immediate Deferments
  - i. Immediately following the debenture sale, the CDC must agree to grant a deferment on the 504 loan of all principal and interest for 90 days; and
  - ii. The Third-Party Lender must agree to grant a deferment immediately following the debenture sale on the Third Party Loan of all principal and interest for 90 days.
- b. The Interim Lender (if applicable), 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 other loans or grants available from Federal, State or local government agencies and entities; and
- c. 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 parties must use the COVID-19 Agreement (Rev May 2020) that is attached to SBA Procedural Notice 5000-20027, not the previous version that is attached to Procedural Notice 5000-20010. (Note that this Agreement does not have an SBA form number. It includes the standard footer language that is used for all SBA procedural notices and should not be confused with a form number for the document.)

A copy of the fully-executed COVID-19 Agreement (Rev May 2020) must be submitted to the appropriate SBA District Counsel for review when the CDC submits its closing package to SBA District Counsel.

### **Questions**

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

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