



SBA Procedural Notice

TO: All SBA Employees and Certified Development Companies

CONTROL NO.: 5000-20064

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

EFFECTIVE: November 24, 2020

The purpose of this Notice is to announce that, for the 504 loans that will be funded through the debenture sales scheduled in January, February and March 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 debenture sales. With the adverse economic effects of the pandemic continuing into the summer, SBA announced in SBA Procedural Notice 5000-20027, effective May 18, 2020, that the COVID-19 Agreement would continue to be available for the debenture sales scheduled for July, August, and September 2020. SBA announced the continued availability of the COVID-19 Agreement for the debenture sales scheduled for October, November and December 2020 in SBA Procedural Notice 5000-20044, effective September 4, 2020. In addition, SBA issued SBA Procedural Notice 5000-20040 on July 28, 2020, “Guidance on Underwriting 504 Loans during the COVID-19 Pandemic” in which SBA provided guidance on the additional analysis that CDCs should conduct in underwriting 504 loans during the pandemic.

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EXPIRES: 11-1-21

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

Must be accompanied by SBA Form 58

Due to the unpredictable and recurrent nature of the pandemic and its adverse effects on the national economy, SBA has determined that the COVID-19 Agreement should continue to be available to remedy a substantial adverse change in the financial condition of the Borrower that occurs after loan application and prior to funding. Accordingly, for the January, February and March 2021 debenture sales, 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 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 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.

SBA notes that the Section 1112 payments are not available for any 504 loans funded through debenture sales held after September 2020. In the event that Congress extends the Section 1112 payments to 504 loans that will be funded through the debenture sales held in January, February or March 2021, 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 any period that SBA is authorized to make the monthly payments for the 504 loan under section 1112 of the CARES Act, 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. If the Section 1112 payments become available for 504 loans that will be funded in January, February or March 2021, the Section 1112 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. 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. For the January, February and March 2021 debenture sales, 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 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
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Office of Capital Access