

Delaware Coronavirus Tracker: PPP Update; FHFA Forbearance Update; NCUA Culture, Diversity and Inclusion Council; Equifax Settlement – 5.19.20

PPP Update

1. Additional Guidance on 504 Certifications of No Adverse Change for July, August and September 2020 Debenture Sales during the COVID-19 Emergency

The purpose of this Notice, which is attached, is to provide guidance to Certified Development Companies with respect to the certifications of No Adverse Change that are required to proceed with the debenture sales scheduled for July, August, and September 2020.

2. The most recent PPP Round 2 loan report has been released with aggregate totals by state and is available at:

<https://home.treasury.gov/system/files/136/SBA-Paycheck-Protection-Program-Loan-Report-Round2.pdf>

3. Additional guidance has not yet been released relative to the 1502 Report for PPP loans.

FHFA Refinance and Home Purchase Eligibility for Borrowers in Forbearance; GSEs Buying Loans in Forbearance

Today, the Federal Housing Finance Agency (“FHFA”) announced that Fannie Mae and Freddie Mac (“GSEs”) have issued temporary guidance regarding the eligibility of borrowers who are in forbearance, or have recently ended their forbearance, looking to refinance or buy a new home. Borrowers are eligible to refinance or buy a new home if they are current on their mortgage (i.e. in forbearance but continued to make their mortgage payments or reinstated their mortgage). Borrowers are eligible to refinance or buy a new home three months after their forbearance ends and they have made three consecutive payments under their repayment plan, or payment deferral option or loan modification.

FHFA is also extending the GSEs previously announced ability to [purchase single-family mortgages](#) in forbearance. They are now able to buy forbore loans, with note dates on or [before June 30, 2020](#), as long as they are delivered to the Enterprises by [August 31, 2020](#) and have only one mortgage payment has been missed. The previous policy was set to expire [on May 31, 2020](#).

NCUA Culture, Diversity and Inclusion Council

Today, the National Credit Union Administration launched of its new Culture, Diversity, and Inclusion Council. Publicly announced by Chairman Rodney Hood during the agency’s [Diversity, Equity, and Inclusion Summit](#) in November 2019, the council’s mission is to build an organizational culture where shared values, beliefs, and behavioral norms around the principles of equity, diversity, inclusion, engagement, and leadership align with the NCUA’s strategic priorities to optimize the agency’s performance. The council is comprised of 18 employees across the agency’s business lines, in both supervisory and non-supervisory roles. Chairman Hood’s full remarks are available on the [agency’s public website](#).

[View the entire press release.](#)

Equifax Class Action Settlement

Equifax has agreed to a proposed class action settlement with financial institutions over its 2017 data breach that affected roughly 147 million people in the United States. The

company will pay up to \$5.5 million for class members and commit to spending at least \$25 million on data security measures over a two-year period under the proposed deal, according to the unopposed motion for preliminary approval of the settlement.



SBA Procedural Notice

TO: All SBA Employees and Certified
Development Companies

CONTROL NO.: 5000-20027

SUBJECT: Additional Guidance on 504
Certifications of No Adverse Change for
July, August and September 2020 Debenture
Sales during the COVID-19 Emergency

EFFECTIVE: 05/18/2020

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. In response to this emergency declaration, on March 25, 2020, SBA issued Procedural Notice 5000-20010 (March Notice) to provide guidance to Certified Development Companies (CDCs) with respect to the certifications of No Adverse Change required to proceed with the debenture sales scheduled for April, May and June, 2020. (The procedural requirements in the March Notice were modified by paragraph C.2 of SBA Procedural Notice 5000-20020, issued April 16, 2020.) The purpose of this Notice is to provide guidance to CDCs with respect to the certifications of No Adverse Change that are required to proceed with the debenture sales scheduled for July, August, and September 2020.

Under 13 CFR 120.892, the following certifications related to No Adverse Change are required before a 504 loan closing:

- The Borrower (and Operating Company if Borrower is an Eligible Passive Company (EPC)) must certify to the CDC that there has been no unremedied substantial adverse change in its financial condition or its ability to repay the Project financing since the date of application. This certification is made by the Borrower (and Operating Company) in SBA Form 2289.
- The Interim Lender must certify to the CDC that it has no knowledge of any unremedied substantial adverse change in the condition of the small business since the application to the Interim Lender and that Borrower is current on its payments to Interim Lender and not otherwise in default on the Interim Loan. This certification is made by the Interim Lender in SBA Form 2288.

- The CDC must opine and certify, before the 504 loan closing, that to the best of its knowledge there has been no unremedied substantial adverse change in the financial condition of Borrower or Operating Company since its submission of the loan application to SBA. This certification is made by the CDC in SBA Form 2101.

For the April, May and June debenture sales, CDCs are required under the March Notice (as modified by Procedural Notice 5000-20020) to consider whether 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. If so, the CDC, the Interim Lender, the Third Party Lender, and the Borrower (and Operating Company, if applicable) may continue with the 504 debenture sale, provided that the parties execute the COVID-19 Substantial Adverse Change Remedy Certification and Agreement (COVID-19 Agreement) attached to the March Notice. Under the COVID-19 Agreement, the CDC and the Third Party Lender agree to grant a deferment of at least 90 days and up to six months on both the 504 and Third-Party Loans immediately after the April, May and June debenture sales. After the deferment period, SBA will begin to make the regular monthly loan payment on the 504 loan for six months, as authorized under section 1112 of the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), enacted on March 27, 2020.

Due to the continuing adverse economic effects caused by the pandemic, SBA continues to be concerned about the financial ability of Borrowers to repay the Project financing. In deciding how to proceed with the July, August and September 2020 debenture sales, SBA has considered the availability of the payments for the 504 loan provided under section 1112 of the CARES Act (referred to as "section 1112 payments"), but continues to be concerned that many, if not most of the Borrowers will not have the immediate financial ability to timely pay the amounts due on the Third Party Loan during the 6-month period of section 1112 payments. It would not assist the Borrower to begin to immediately receive the section 1112 payments on the 504 loan only to have the Borrower default on the Third-Party Loan during the 6-month period of section 1112 payments. Thus, for 504 loans for which the COVID-19 emergency has created an adverse change in the Borrower's ability to repay the Project financing, SBA has decided to continue requiring an immediate 90-day deferment on both the 504 and Third Party Loans after the debenture sales, with the section 1112 payments to begin after the deferment period. As stated in SBA Procedural Notice 5000-20010, the unexpected and sudden change in national economic conditions caused by the COVID-19 emergency, 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 504 applicants who have not yet closed on their 504 loan. SBA hopes that the combined 9-month period of deferments and section 1112 payments will assist Borrowers in improving their cash flow so that they will be able to make their payments on the 504 and Third Party Loans after the 9-month period.

Accordingly, for the July, August and September 2020 debenture sales, CDCs may proceed with the debenture sale under the conditions and requirements set forth below. These conditions and requirements apply to any 504 loan funded through the debenture sales scheduled for July, August, and September, 2020, regardless of the date that the Authorization was issued.

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. In making this determination, the CDC must consider whether it is likely that the Borrower will have the ability, during the 6-month period that SBA will be making 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 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.

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 attached 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 will begin after the deferment period granted under the COVID-19 Agreement (Rev May 2020) and these payments will be made in accordance with SBA Procedural Notices 5000-20020 and 5000-20023. 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 July, August, and September debenture sales, the parties must use the COVID-19 Agreement (Rev May 2020) that is attached to this Notice, 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
Associate Administrator for Capital Access
Office of Capital Access

Attachment

COVID-19 SUBSTANTIAL ADVERSE CHANGE REMEDY CERTIFICATION AND AGREEMENT (Rev. May 2020)

In connection with SBA 504 Loan Number _____, the Certified Development Company (CDC), Interim Lender, Third Party Lender, Borrower, and Operating Company (if applicable) listed below certify and agree as follows:

1. The parties have signed SBA form certifications and agreements in connection with this 504 loan closing, including certifications regarding whether there has been an unremedied substantial adverse change in the financial condition of the Borrower (and Operating Company, if applicable). See SBA Forms 2288 (Interim Lender Certification), SBA Form 2287 (Third Party Lender Agreement), SBA Form 2289 (Borrower and Operating Company Certification), and SBA Form 2101 (CDC Certification). This document amends those certifications and agreements.
2. The CDC has concluded that the national emergency arising from the ongoing Coronavirus Disease 2019 (COVID-19) pandemic is the immediate and direct cause of a substantial adverse change in the Borrower's (and/or Operating Company's, if applicable) ability to repay the Project financing, and remedial measures are necessary to address the substantial adverse change.
3. Immediately following the debenture sale, CDC agrees to grant the Borrower (and Operating Company, if applicable) a deferment on the 504 loan, including all principal and interest, for 90 days after the debenture sale to assist the Borrower (and Operating Company, if applicable) in improving its cash flow.
4. Immediately following the debenture sale, the Third-Party Lender agrees to grant the Borrower (and Operating Company, if applicable) a deferment on the Third Party Loan, including all principal and interest, for 90 days after the debenture sale to assist the Borrower (and Operating Company, if applicable) in improving its cash flow. The Third Party Lender agrees that the Borrower's failure to make any payment under the Third Party Loan during the period of deferment shall not constitute a default (or Event of Default) under the Third Party Loan documents or applicable law and the Third Party Lender agrees not to exercise any rights or remedies that may otherwise be available as a result of the failure to make any such payments during the deferment period. Notwithstanding the foregoing, all other terms and conditions under the Third-Party Loan documents and the Third Party Lender Agreement shall remain in full force and effect.
5. The CDC, Interim Lender (if applicable) and Third Party Lender agree to make a good faith effort to assist the Borrower (and Operating Company, if applicable) with additional remedial measures including, but not limited to, assisting the Borrower (and Operating Company, if applicable) 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.
6. Borrower (and Operating Company, if applicable) agree to use its best efforts to seek out, apply for, and obtain available sources of financial assistance, as necessary to continue to operate.

7. Borrower (and Operating Company, if applicable) has not filed a bankruptcy petition or any other insolvency proceeding as of the date of this agreement.
8. Interim Lender certifies that the Borrower (and Operating Company, if applicable) are current on their payments to the Interim Lender and not otherwise in default on the Interim Loan.
9. This document may be signed in counterparts.

INTERIM LENDER

By: _____
Title:

Date

THIRD PARTY LENDER

By: _____
Title:

Date:

BORROWER:

OPERATING COMPANY:

By: _____
Title:
Date:

By: _____
Title:
Date:

CERTIFIED DEVELOPMENT COMPANY

By: _____
Title:
Date: