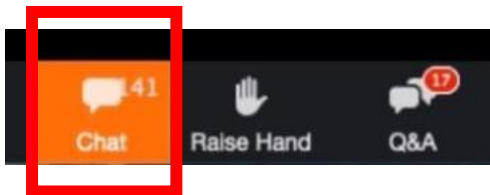


## Copy of Today's Presentation

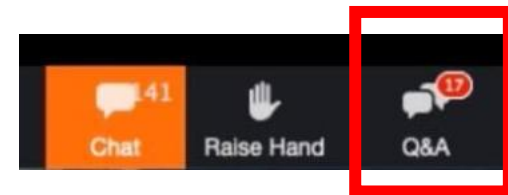
Please see the link posted in the Webinar **Chat** to download a copy of today's presentation.



## Submitting Questions

Please use the Webinar **Q&A option** to submit your questions.

If we don't have time to answer them live today, we'll respond by email.





**J.R. Bruno**  
& ASSOCIATES

# **EPC/OC CHALLENGES**

## **ASK THE EXPERTS**

February 18, 2021

# PANELISTS

## Guest:

- Jan Garlitz, Esq. Janice E. Garlitz, P.C.
  - [jangarlitz@netzero.net](mailto:jangarlitz@netzero.net)

## J. R. Bruno & Associates:

- Sanford (Sandy) Mortan, Senior Associate
- Richard Jeffrey, Senior Associate CDC Outreach
- Alex Liberchuk, President, J R Bruno & Associates

# TODAY'S TOPICS

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**504 Refi Rules as  
They Stand Today**

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**Richard Jeffrey**

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**504 Loan  
Potpourri**

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**Jan Garlitz**

# CHANGES TO DEBT REFI PROGRAMS BY ECONOMIC AID ACT HAVE NOT BEEN IMPLEMENTED YET

- Implementation will require the issuance of an INTERIM FINAL RULE
- The IFR will be published in the Federal Register and will contain the Economic Aid Act's changes to the applicable SBA Debt Refinance regulations
  - The IFR will include an Effective Date for the changes
- SBA also will issue a Procedural Notice about the regulatory changes and other implementing procedures
  - This Notice will effectively make changes to the Debt Refinance provisions of SOP 50 10 6



# WHAT HAS NOT CHANGED

- New financings for Debt Refi Without Expansion during any fiscal year cannot exceed 50% of the dollars the CDC loaned under the 504 Loan Program during the previous fiscal year
- But this can be waived for “good cause” – SBA considers the following factors:
  - Whether the Borrower has access to other sources of financing, including other CDCs that have not exceeded their 50% cap
  - Whether the CDC has an existing 504 loan with the Borrower that is in current status



# WHAT HAS NOT CHANGED

- The debt was incurred not less than 2 years prior to the date of the 504 Loan application
- The debt was incurred for the benefit of the Applicant
- The debt has been secured by 504-Eligible Fixed Assets for at least 2 years
- CDC must submit to SLPC:
  - Copies of the most current debt and lien instruments and, if the original debt was refinanced, copies of the debt and lien instruments for the debt that was replaced by the current debt
  - Transcripts of Account from the current lender of the previous 12-month payment history which confirm that the Applicant has been “current on all payments due” for not less than 1 year preceding the date of application

# WHAT HAS NOT CHANGED

- The Applicant must have been current on all payments due on the debt to be refinanced for not less than 1 year before the date of the application (without expansion) or for not less than 1 year before the date of the 504 refinancing (with expansion)
- BUT, per SBA Procedural Notice 5000-20069, a loan that is on deferment, or that was granted a deferment for some period of time in the prior 12 months, will qualify for refinancing if . . .





# REFINANCING A DEFERRED LOAN

- The Applicant must bring the loan current on all the payments that were deferred prior to the loan being approved for debt refinancing – this means current on principal, interest, any fees, and any catch-up payments; and
- The deferment on the loan to be refinanced was granted on or after March 1, 2020; and
- The Applicant includes a statement in the 504 Loan application that the deferment was granted due to the Applicant being adversely affected by COVID-19; and
- The Applicant is otherwise be current on all payments due

# THIS WILL CHANGE SOON . . . MAYBE?

- Notice 5000-20069 requires that your application to refinance debt that has been on deferment must be submitted on or before March 31, 2021



# WHAT HAS NOT CHANGED – 85% RULE

- **RULE:** Substantially all (85% or more) of the original loan proceeds must have been for Eligible Fixed Assets and the remaining amount (15% or less) was incurred for the benefit of the small business Applicant
- **BUT** if any portion of the remaining 15% or less was used for an ineligible purpose, then the debt in its entirety is ineligible for 504 debt refinancing
- **EXAMPLE:** 15% of the original debt was used to pay off a loan previously made by the owner to the small business – this is prohibited by 13 C.F.R. § 120.130(a)



# Questions?

# 504 LOAN POTPOURRI

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Jan Garlitz

# CARES ACT § 1112 PAYMENTS ADJUSTMENT PLAN

- All CARES Act § 1112 payments under the Economic Aid Act are subject to the availability of funds
- SBA is required to monitor when the \$3.5 billion appropriated under the Act is sufficient
- If not sufficient, then SBA must develop a plan to proportionally reduce the number of months of First and Second Round § 1112 payments
- With SBA Procedural Notice 5000-20095, SBA announced there are insufficient funds and its Adjustment Plan



# § 1112 PAYMENTS ADJUSTMENT PLAN

Category of Eligible Loans	Intended Economic Aid Act Payments	Adjustment Plan Payments
Newly Eligible First Round 504 or 7(a) Loans approved on or before 09/27/20 and fully disbursed on or after 09/28/20	6 months of payments	3 months of payments
Second Round 504 or 7(a) [but not CA] Loans approved before 03/27/20	3 months of payments subject to \$9,000/month cap	2 months of payments subject to \$9,000/month cap – this may cover past due amounts when SBA makes the 02/21 payment
Second Round 504 or 7(a) [but no CA] Loans for Borrowers in hard-hit industries (NAICS Codes 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812)	Additional 5 months of payments subject to \$9,000/month cap	Additional 3 months of payments subject to \$9,000/cap

# § 1112 PAYMENTS ADJUSTMENT PLAN

Category of Eligible Loans	Intended Economic Aid Act Payments	Adjustment Plan Payments
<b>Second Round Community Advantage and Microloans approved before 03/27/20</b>	8 months of payments subject to \$9,000/month cap	5 months of payments subject to \$9,000/month cap For CA Loans, SBA will make payments to cover past due amounts not to exceed 120 days
<b>New 504, 7(a) or Microloans approved 02/01/21-09/30/21</b>	6 months of payments	3 months of payments
<b>504, 7(a) or Microloans approved between 03/27/20 and 09/27/20</b>	Eligible for 6 months of First Round payments if fully disbursed on or before 09/27/20  Eligible for 3 months of payments if fully disbursed after 09/27/20	No Second Round payments



# SAM REGISTRATION

- SBA Information Notice 5000-20094 (02/12/21) requires all recipients of Federal loans, loan guarantees, and other types of Federal assistance to register in the System for Awards Management (<https://sam.gov/SAM>)
- For SBA Lending Programs, this means:
  - CDCs
  - 7(a) Lenders, including Paycheck Protection Program Lenders
  - Microloan Intermediaries
- Once registered, the Lender will get a unique SAM entity identifier
- There are 2 steps to registration:
  - (1) Create a User Account
  - (2) Register Entity – this will be your CDC

# SAM REGISTRATION



**A NEW WAY TO SIGN IN** - If you already have a SAM account, use your **SAM email** for login.gov.

**Log In**

[Login.gov FAQs](#)

[HOME](#) | 
 [SEARCH RECORDS](#) | 
 [DATA ACCESS](#) | 
 [CHECK STATUS](#) | 
 [ABOUT](#) | 
 [HELP](#)

**⚠️ ALERT:** SAM.gov will be down for scheduled maintenance Saturday, 03/13/2021 from 8:00 AM to 1:00 PM.

The System for Award Management (SAM) is an official website of the U.S. government. There is no cost to use SAM. You can use this site for FREE to:

- Register to do business with the U.S. government
- Update or renew your entity registration
- Check status of an entity registration
- Search for entity registration and exclusion records

## Getting Started

Create A User Account



Start by creating a SAM user account.

Register Entity



After creating your SAM user account, log in to register to do business with the U.S. government.

Search Records



Do a public search for existing entity registration records or exclusion records.

Federal users can log in to see additional information.

# SAM REGISTRATION

- CDCs need not only to register, but to maintain active SAM registration in order to continue to participate in the 504 Loan Program
- To maintain active registration, CDC must review and update information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure the information is current, accurate, and complete
  - Recommendation: Add the annual date for reviewing and updating the SAM database to your tickler.



# SAM REGISTRATION

- Notice 5000-20094 also states SBA will be revising its regulations, SOPs, Forms, and electronic systems (e.g., CAFS) to capture each SBA Lender's unique entity identifier, outline SBA's verification procedures, and explain possible consequences for noncompliance
- SAM Registration is not needed to search SAM records for Small Business Applicants, Agents and new employees
- So lots to look forward to



# EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

- On January 19, 2021, SBA published a proposed rule providing that faith-based organizations will now be eligible to participate in the Business Loan Programs (504 and 7(a)) and Disaster Assistance Programs
- This will eliminate 13 C.F.R. §120.110(k), which has provided that “businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting” are ineligible Borrowers



# EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

- The proposed rule does not change 13 C.F.R. § 120.110(a), which provides that non-profit businesses are ineligible for SBA Loans, but for-profit subsidiaries are eligible
- On January 19, 2021, SBA's General Counsel issued a Memorandum to all SBA Employees that SBA is no longer using the SBA Form 1971, Religious Eligibility Worksheet for all 7(a) and 504 Loan Programs



# EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

- At this time, there is no guidance from SBA on processing Loans for Faith-Based Organizations
- For-profit concerns, whether owned by non-profit religious entities or their affiliates, remain eligible if their business activity does not rise to the level of religious teaching, instructing, counseling or indoctrination
  - Examples: religious book store, radio broadcaster playing religious music, publishers of religious newspapers or computer software

**CHRISTIAN  
BOOKSTORE**



# ENVIRONMENTAL QUESTIONNAIRE

- SOP 50 10 6, Appendix 4, requires that any Environmental Questionnaire prepared by the CDC must include the following language with respect to false statements before the signature(s) of owner(s) and/or operator(s):
- “The undersigned owner(s) and/or operator(s) acknowledge(s) and agree(s) that intentionally falsifying or concealing any material fact with regard to the subject matter of this Environmental Questionnaire may, in addition to other penalties, result in prosecution under applicable law including 18 U.S.C. section 1001.”



# ENVIRONMENTAL QUESTIONNAIRE

- This change to Environmental Questionnaires does not apply to EQ prepared by an Environmental Professional for a TSR/TSA or Phase I EDA
- There is a grace period until April 1, 2021 to add the language to your Environmental Questionnaires

ENVIRONMENTAL  
ISSUES



# FLOOD INSURANCE

- **EXAMPLE:** Borrower needs to get flood insurance
  - The quote for NFIP is \$26,000 and NFIP has a cap of \$500,000 for flood insurance for non-residential buildings
  - The quote from Lloyd's of London is \$2,600
  - What can the CDC do?



# FLOOD INSURANCE

- SBA now permits private flood insurance that meets the same requirements as the standard NFIP policy per SOP 50 10 6 p. 209:
  - Coverage at least as broad as NFIP when considering deductibles, exclusions and conditions
  - Endorsement that gives 45 days' notice of cancellation or non-renewal to the insured and CDC/SBA
  - Includes information about the availability of flood insurance coverage under NFIP

# FLOOD INSURANCE

- Contains Mortgagee (for real property) and/or Lender Loss Payees (for personal property) clauses
- Contains provision requiring insured to file suit not later than 1 year after date of written denial of all or part of a claim
- Contains cancellation provisions that are as restrictive as those in the standard NFIP policy



# UPDATE ON CDC PROCESSING FEE WAIVER

- Economic Aid Act § 327(b) provides two fee waivers for 504 Loans approved 12/27/20-09/30/21:
  - CDC Processing Fee – SBA will pay the CDC
  - Third Party Lender participation fee – don't collect
- SBA provided guidance on January 27, 2021 in Information Notice 5000-20085
- Both fees are eliminated subject to offset by appropriations
- SBA will reimburse CDCs in two steps:
  - 2/3rds of the CDC Processing Fee (1.0% of the Net Debenture Proceeds) will be sent to the CDC at the time of Loan Approval (Approval Date on Authorization) or, for PCLP CDCs, when SBA issues the Loan Number
  - The remaining 1/3rd (0.5% of Net Debenture Proceeds) will be paid immediately following Debenture funding

# UPDATE ON CDC PROCESSING FEE WAIVER

- If a Borrower has already paid any portion of the CDC Processing, the CDC must fully reimburse the Borrower within 10 business days of the CDC's receipt of the fee from SBA
  - CDC must retain documentation of that reimbursement in the Loan File
- The SLPC is in the process of making the appropriate fee relief changes in E-TRAN for Authorizations issued between 12/27/20 and the present
  - This entails between 700 and 800 504 Loans
  - The changes should be finished for all applicable Loans by no later than March 17, 2021, but don't hold us to that
- **BE PATIENT!**



# UPDATE ON CDC PROCESSING FEE WAIVER

Meanwhile:

- NO 327 ACTIONS TO THE SLPC
- NO CALLS OR EMAILS TO THE SLPC OR TO SBA HEADQUARTERS
- But feel free to coordinate with your SBA Counsel



# UPDATE ON CDC PROCESSING FEE WAIVER

- While awaiting the E-TRAN changes, CDCs have two options if the 504 Loan is ready to be closed:
  - Close the 504 Loan based on the Debenture pricing in the original Authorization
  - Recalculate the Debenture pricing and use those numbers in the closing documents
- Using original Debenture pricing means that either SBA Counsel or the CSA will require the CDC to change the Debenture, Note and Servicing Agent Agreement and other Loan documents as applicable
- Using the recalculated Debenture pricing means that your Loan documents will be correct when the fee waiver change is made in E-TRAN



# UPDATE ON CDC PROCESSING FEE WAIVER

	Original Debenture Pricing	Recalculated Debenture Pricing
Net Debenture Proceeds	\$449,000.00	\$449,000.00
SBA Guarantee Fee	\$2,245.00	\$2,245.00
Trustee Fee	\$1,122.50	\$1,122.50
CDC Processing Fee (0.015)	\$6,735.00	\$0.00
Closing Costs	\$2,500.00	\$2,500.00
Subtotal	\$12,602.50	\$5,867.50
Underwriters Fee	\$1,856.00	\$1,828.00
Total Debenture Amount	\$464,000.00	\$457,000.00
Balance to Borrower	\$541.50	\$304.50

**Questions?**

# Thank you!

