

# SBA Policy Notice

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**TO:** All SBA Employees

**CONTROL NO.:** 5000-1382

**SUBJECT:** Reauthorization of 504 Debt  
Refinancing Program

**EFFECTIVE:** 05/26/2016

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The Small Business Jobs Act of 2010 (Jobs Act), P.L. 111-240, temporarily expanded the ability of a small business to use the 504 Certified Development Company (CDC) Loan Program (504 Loan Program) to refinance certain qualifying existing debt. This temporary debt refinancing program expired on September 27, 2012. On December 18, 2015, the program was reauthorized and made a permanent part of the 504 Program with the statutory modifications described below. See Section 521 of Division E of the Consolidated Appropriations Act, 2016 (the Act), Public Law 114-113. SBA has published an Interim Final Rule that conforms the current regulation on debt refinancing (13 CFR 120.882(g)) to the new statutory requirements. [<https://www.gpo.gov/fdsys/pkg/FR-2016-05-25/pdf/2016-12447.pdf>] This program will be known as the 504 Debt Refinancing Program.

Loans made under the 504 Debt Refinancing Program are 504 loans and are subject to all applicable 504 Loan Program Requirements. This Policy Notice provides further guidance on program requirements specific to the 504 Debt Refinancing Program.

## Statutory Changes

The Act made three statutory modifications to the 504 Debt Refinancing Program:

- (1) The 504 Debt Refinancing Program will be in effect only in any fiscal year in which the subsidy cost to the Federal government of making guarantees under the 504 Debt Refinancing Program and under the 504 Loan Program is zero.
- (2) Each CDC's new financings under the 504 Debt Refinancing Program during any fiscal year cannot exceed 50% of the dollars the CDC loaned under the 504 Loan Program during the previous fiscal year. (The Act allows this limitation to be waived for good cause. SBA will not consider waiver applications until FY 2017, given that there are less than 6 months remaining in this fiscal year).
- (3) Elimination of the alternative job retention goal authorized previously by the Jobs Act. Accordingly, all refinancing projects must satisfy the job creation and retention requirements that apply to any 504 Project.

## 504 Debt Refinancing Program Requirements

### Eligibility and Related Definitions

- (1) The Borrower must have been in operation for all of the two year period ending on the date of application, as evidenced by the financial statements submitted at the time of application. If the ownership of the Borrower has changed, either partially or fully during the two year period, the Borrower is considered a new business and the Borrower's debt is not eligible for refinancing under the 504 Debt Refinancing Program.

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- (2) Any refinancing under the 504 Debt Refinancing Program must include Qualified Debt, as defined below. In addition, as further described below, the refinancing may also include Eligible Business Expenses. The amount of any refinancing under the 504 Debt Refinancing Program is subject to the Loan-to-Value Limitations in this Notice.
- (3) “Eligible Fixed Assets” are one or more long-term fixed assets, such as land, buildings, machinery, and equipment, acquired, constructed or improved by a small business for use in its business operations.
- (4) “Refinancing Project” means the fair market value of the Eligible Fixed Asset(s) securing the Qualified Debt and any other fixed assets acceptable to SBA (Additional fixed assets may be added only when needed to comply with the 90% Loan-to-Value Limitation in this Notice).
- (5) “Qualified Debt” means a commercial loan:
  - (a) substantially all (85% or more) of the proceeds of which were used to acquire an Eligible Fixed Asset (as defined in 13 CFR §120.882(g)(15)). If the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the “substantially all” standard (the “original loan”) and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy this requirement;
  - (b) that was incurred not less than 2 years prior to the date of application;
  - (c) that was for the benefit of the small business seeking the refinancing;
  - (d) that has been secured by the Eligible Fixed Asset for at least 2 years;
  - (e) for which the Borrower has been current on all payments due for not less than one year preceding the date of application. “Current on all payments due” means that no payment was more than 30 days past due from either the original payment terms or modified payment terms (including deferments) if such modification was agreed to in writing by the Borrower and the lender of the existing debt not less than one year prior to the date of application;
  - (f) that is not subject to a guarantee by a Federal agency or department; and
  - (g) that is not a Third Party Loan which is part of an existing 504 Project.
- (6) The Qualified Debt may consist of a combination of two or more loans, provided that each of the loans satisfies the Qualified Debt requirements.
- (7) “Eligible Business Expenses” are limited to the following business expenses:
  - (a) “Other Secured Debt” means debt that has been secured for at least 2 years prior to the date of application by the same Eligible Fixed Asset(s) securing the Qualified Debt and for which the Borrower has been current on all payments due for not less than one year preceding the date of application. “Current on all payments due” means that no payment was more than 30 days past due from either the original payment terms or modified payment terms (including deferments) if such modification was agreed to in writing by the Borrower and the lender of the existing debt not less than one year prior to the date of application; and
  - (b) “Business Operating Expenses” means business expenses other than Qualified Debt or Other Secured Debt, including salaries, rent, utilities, inventory, or other obligations of the business, that were incurred but not paid prior to the date of application or that will become due for payment within 18 months after the date of application.

- (8) If the Borrower is requesting that the refinancing include Eligible Business Expenses, the application must include a specific description of the Eligible Business Expenses and an itemization of the amount of each expense, with the Form 1244 certification of the accuracy of this information.

#### Loan-to-Value Limitations

- (1) For projects that refinance only Qualified Debt and Other Secured Debt, the maximum loan to value of the Refinancing Project allowed is 90%.
  - a. For projects when the amount of Qualified Debt and Other Secured Debt being refinanced is more than 90 percent of the value of the Eligible Fixed Asset(s) securing the Qualified Debt, the Borrower must provide additional cash or other fixed asset collateral acceptable to SBA so as not to exceed a 90% loan to value of the Refinancing Project.
- (2) For any projects that include the financing of "Business Operating Expenses," a maximum 75% loan to value of the Refinancing Project will apply and the Business Operating Expenses portion of the project may not exceed 25% of the value of the Eligible Fixed Asset(s) securing the Qualified Debt. Any fixed assets added to satisfy the 90% loan to value requirement set forth in paragraph I above will not serve to increase the amount of Business Operating Expenses that may be financed.

#### Fees

For loans approved under the 504 Debt Refinancing Program during Fiscal Year 2016, the total annual guarantee fee is 0.958% (95.8 basis points) on the unpaid principal balance of the debenture. This fee amount includes the guarantee fee assessed under 13 CFR § 120.971(d)(2) and the supplemental guarantee fee required by the Act to cover the additional cost attributable to refinancing. The CDC should follow the instructions on the Authorization for Debenture Guaranty to ensure the fee is correct.

SBA will review the fee annually to determine whether it needs to be changed and, if so, will issue a notice of any change.

#### Other Implementation Guidelines

- (1) Borrower must meet all current 504 Loan Program occupancy requirements at time of application.
- (2) Loan applications for assistance under the 504 Debt Refinancing Program must be processed by SBA and may not be approved by CDCs under PCLP authority.

#### Documentation Requirements

- (1) Credit memorandum. The CDC must provide an analysis in its credit memorandum that the proposed debt refinancing satisfies each of the requirements of the 504 Debt Refinancing Program.
- (2) Form 1244. At application, the Borrower and CDC must certify that the debt is eligible (Exhibit 2 of SBA Form 1244) and the Third Party Lender must certify in its commitment letter that it has no reason to believe that the debt is not eligible (Exhibit 17 of SBA Form 1244), as instructed in SBA Form 1244 Part D.

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- (3) Transcripts. The CDC must submit a transcript of the previous 12-month payment history on the Qualified Debt and Other Secured Debt being refinanced which confirms that the Borrower is “current on all payments due” (as defined in this Policy Notice) for not less than one year preceding the date of application (Exhibit 21 of SBA Form 1244).
- (4) Appraisal. Appraisals are not required at time of application. Appraisals dated within 6 months of the date the application was approved are required prior to closing, and appraisals must otherwise comply with the requirements for appraisals set forth in SOP 50 10 5 (H).
- (5) Documentation to Verify Lien(s) at Application. In considering the Borrower’s application, the CDC must obtain evidence that lien(s) are securing the Qualified Debt and any Other Secured Debt with Eligible Fixed Asset(s), and state in its credit memorandum that it has verified that the lien(s) has been in place for at least 2 years prior to the date of application. The CDC must retain the evidence of the liens in its records (e.g., Preliminary Title Report, Mortgage Deed of Trust, or UCC-1 filing).

#### Interim Lender Documentation

The Interim Lender must execute SBA Form 2288R, Interim Lender Certification for Refinancing Program, similar to what is required in all 504 closings.

#### Same Institution Debt

When the loan being refinanced is Same Institution Debt (as defined in 13 CFR § 120.882(g)(15)), the Third Party Lender may modify its existing loan documents (Note, Deed of Trust/Mortgage, etc.) instead of requiring the Borrower to execute and record new loan documents for the Third Party Loan. All modified loan documents must meet SBA’s regulatory requirements for a Third Party Loan (see 13 CFR §§ 120.920 and 120.921).

In addition, when the loan being refinanced is Same Institution Debt, no Interim Lender may be used; instead, an escrow account is required, and:

- (1) The Third Party Lender (who, in this case, is also the Lender of the debt being refinanced) must execute SBA Form 2416, Lender Certification for Refinanced Loan.
- (2) The CDC must create an escrow account at the time of closing of the 504 loan for the purpose of holding the Borrower’s cash contribution, if any, and the net debenture proceeds. The following requirements apply to the escrow account (“the account”):
  - (a) The account will be established in accordance with an Escrow Agreement which must be executed by the Borrower, the Third Party Lender, the Escrow Agent and the CDC. The account may be held by the CDC attorney, Title Company or other party approved by SBA District Counsel.
  - (b) The Borrower’s cash contribution, if any, must be deposited into the account at the time of closing of the 504 loan.
  - (c) A copy of the Escrow Agreement must be provided to the SBA’s District Counsel with evidence of funding by Borrower’s cash contribution, if any, at the time of closing of the 504 loan.
  - (d) The net debenture proceeds must be wired to the account, and all funds may be released only upon written approval by the CDC and SBA, provided that CDC/SBA have the required lien positions on the collateral as set forth in the Authorization and Debenture Guaranty.

- (e) The debt to be refinanced will be satisfied by payment of the escrowed funds to the Third Party Lender.

Other Than Same Institution Debt

When the loan being refinanced is not Same Institution Debt, SBA may permit the lender of the debt to be refinanced to assign its existing loan documents to the Interim Lender if an Interim Lender is used, or to the Third Party Lender if no Interim Lender is used. The existing loan documents may be modified, as appropriate, rather than requiring that new documents be executed for the Refinancing Project. The Interim Lender, if any, may then assign the documents to the Third Party Lender.

Effective Date for Accepting Applications

The Sacramento Loan Processing Center will begin accepting applications June 24, 2016.

Questions regarding this notice should be directed to the lender relations specialist in the local SBA field office.

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Maria Contreras-Sweet  
Administrator

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