



SBA Policy Notice

TO: All SBA Employees

CONTROL NO.: 5000-1108

SUBJECT: Change to 504 Certified
Development Company Loan
Program Regarding Debt
Refinancing as a Result of Recovery
Act

EFFECTIVE: 6-23-2009

On February 17, 2009, the American Recovery and Reinvestment Act of 2009, P.L. 111-5, was signed into law. This Act changes the Small Business Investment Act (SBI Act) to permit debt refinancing under certain circumstances as part of the 504 Certified Development Company (CDC) Loan Program. SBA has amended its regulations to implement the new law. [See [Federal Register: June 23, 2009 \(Volume 74, Number 119\)](#)]. The debt refinancing authorized by the Recovery Act is available for loan applications received by SBA on or after June 23, 2009, the effective date of the regulations. In addition, applications received or loans approved prior to that date may be modified to include debt refinancing provided that the related debenture has not been funded. The additional guidance announced in this Policy Notice is effective immediately, and will be incorporated into the Standard Operating Procedures (SOP) with the next semi-annual revision.

I. Debt refinancing under the 504 Program

A. To implement the debt refinancing provisions of the Recovery Act, SBA announces the following policy changes, which are effective immediately, and which will be added as a new paragraph b), titled "Permissible Debt Refinancing", to SOP 50 10 5 (A), Subpart C, Chapter 2, paragraph III.H.4. with the next semi-annual revision as follows:

III. Eligibility Requirements

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H. 504 Program-Specific Eligibility Factors

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4. Eligible and Ineligible Project Costs

a) Eligible Project costs 13 CFR 120.822

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b) Permissible Debt Refinancing

504 Projects may include a limited amount of debt refinancing, as follows: If the Project involves expansion of a small business applicant, any amount of existing indebtedness that does not exceed 50 percent of the cost of the expansion may be refinanced. The debt being refinanced will be added to the expansion cost to establish the total project costs, if all the conditions discussed below are met. "Expansion" includes any Project that involves the acquisition, construction or improvement of land,

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building or equipment for use by the small business applicant.

In its loan analysis submitted to SBA for non-Premier Certified Lenders Program (PCLP) loans, the CDC must include a conclusion that the proposed debt refinancing meets all the conditions listed below with supporting analysis and documentation. For PCLP loans, the PCLP CDC will transmit the Eligibility Information Required for PCLP Submission (SBA Form 2234, Part C), in which the PCLP CDC is required to address these conditions, and must maintain the analysis and documentation in its file.

- (1) The proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment.
 - (a) All loans being refinanced in the Project must have been used to acquire fixed assets eligible for the 504 Loan Program. A loan is disqualified from refinancing under the 504 program if it was used for working capital or other purpose(s) not eligible for 504 program financing. Where only a portion of the loan was used for 504 eligible fixed assets, that portion of the loan may be eligible for refinancing.
 - (b) Whether the new project is within the CDC's area of operation is based on the assets newly acquired for the business not the assets securing the debt being refinanced. If the assets refinanced or any collateral securing the loan are outside the CDC's Area of Operations, it is the CDC's responsibility to establish that the CDC is capable of closing and servicing the loan and monitoring the collateral. Evidence must be approved by SBA with the exception of PCLP CDCs which must document the file with evidence regarding the CDC's capability to close and service the loan and monitor the collateral.
 - (c) Instruments resulting in transfer of ownership of the property to the Small Business Applicant may be eligible for refinancing, including, but not limited to, land sales contracts, contracts for deed or capital leases.
 - (d) The purchase of property under an operating lease is eligible for 504 financing, but the operating lease itself is not eligible for debt refinancing.
 - (e) In order to be eligible for debt refinancing, a copy of the corresponding debt and lien instruments must be submitted with the application.
- (2) The existing indebtedness is collateralized by fixed assets.

The 504 eligible fixed assets collateralizing any debt to be refinanced, or relating to the portion of debt being refinanced in the case of a partial refinance, must also collateralize the 504 Loan unless SBA [Sacramento Loan Processing Center (SLPC)] approves a waiver due to extraordinary circumstances. PCLP CDCs may not use their delegated authority to approve a loan requiring this waiver. The lender of the existing

indebtedness must release, subordinate or assign its lien on the 504 eligible fixed assets to the lien of SBA and/or the Third Party Lender so that the Third Party Lender and/or SBA will maintain the same lien position on the collateral that was held by the lender whose debt is being refinanced.

- (3) The existing indebtedness was incurred for the benefit of the small business concern.
 - (a) The small business for which debt is refinanced must be the same small business for which any new Project costs are incurred. The debts being refinanced may be owed by an Operating Company, an Eligible Passive Company or both.
 - (b) An existing 504 loan may be refinanced if it meets the conditions of Paragraph b, “Permissible Debt Refinancing”.
 - (c) An existing 7(a) loan may be refinanced in whole or in part only if the CDC has provided verification that the present lender is either unwilling or unable to modify the current payment schedule. If the Third Party Lender or the CDC affiliate [as authorized under [13 CFR 120.852\(a\)](#)] is the 7(a) lender, the loan will be eligible for 504 refinancing only if the lender is unable to modify the terms of the existing loan because a secondary market investor will not agree to modified terms.
- (4) The financing will be used only for refinancing existing indebtedness or costs relating to the Project financed.
 - (a) Debt being refinanced does not need to be for assets at the same location or for the same type of property as the Project being financed as long as the operation at the other location has the same NAICS code as the operation at the Project location.
 - (b) Costs essential to the refinancing, such as prepayment penalties, financing fees or other refinancing costs, required by the original terms of the debt instrument, may be included in the debt refinance portion of a Project.
 - (c) The total debt being refinanced may consist of one or more loans.
- (5) The financing will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for.

“Substantial Benefit” means that the portion of the new installment amount attributable to the debt being refinanced must be at least 10 percent less than the existing installment amount(s). Prepayment penalties, financing fees, and other financing costs must also be added to the amount being refinanced in calculating the percentage reduction in the new installment payment. Exceptions to the 10% reduction requirement may be approved by the Director, Office of Financial Assistance (D/FA)

or designee for good cause. PCLP CDCs may not use their delegated authority to approve a loan requiring this exception.

- (6) The borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing.

“Date of refinancing” refers to the date the 504 loan is approved by SBA. The CDC must submit a transcript of account, or similar documentation containing detailed payment history from the lender whose debt is being refinanced reflecting that the loan has been current for one year (or for the time the debt has been open if less than one year). Any unremedied delinquency after approval must be reported to SBA as an adverse change.

- (7) The financing under section 504 will provide better terms or rate of interest than the existing indebtedness on the date of refinancing.

“Better terms or rate of interest ” may include longer maturity (but always commensurate with the assets’ useful life), a lower interest rate committed on the Third Party Lender Loan or projected on the 504 Loan, improved collateral conditions, or less restrictive loan covenants.

- (8) A 504 Project cannot be approved to refinance debt owed:

- (a) To an Associate, which is prohibited by [13 CFR 120.130\(a\)](#);
- (b) To an SBIC, which is prohibited by [13 CFR 120.130\(b\)](#); or
- (c) To any creditor in a position to sustain a loss causing a shift to SBA of all or a part of a potential loss from an existing debt. *See* new regulation at [13 CFR 120.884\(b\)](#).

- (9) PCLP authority must not be used to refinance Same Institution Debt.

“Same Institution Debt” is defined as any debt of the CDC or the Third Party Lender financing the new project, or of affiliates of either. *See* new regulation at [13 CFR 120.882\(e\)\(8\)](#).

(Note: Equity in land and/or building that is being refinanced may be included as Borrower’s equity as set forth under present policy.)

B. The provisions of [13 CFR 120.922](#), Pre-Existing Debt on the Project Property, remain unchanged. In addition, the first sentence of [50 10 5 \(A\), Subpart C, Chapter 2, paragraph III.H.7.](#), which provides that “[p]re-existing debt is not an eligible project cost” is no longer effective as of the date of this Policy Notice, and will be deleted with the next semi-annual revision.

C. For debt refinancing loan applications submitted under the Abridged Submission Method, CDCs must submit, in addition to the other items listed in SOP 50 10 5 (A), Subpart C, Chapter 4, paragraph III.D.1.d, copies of debt and lien instruments, and a transcript of account or equivalent, which will be Exhibit 24 to the application. This requirement is effective immediately and will be added to the SOP as a new paragraph (7) to SOP 50 10 5 (A), Subpart C, Chapter 4, paragraph III.D.1.d in the next semi-annual revision.

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

Karen G. Mills
Administrator