

Technical Issues Memo 01-12

To: NADCO Members (Please disseminate to all appropriate personnel)

From: Mary Mansfield, Vice Chair of Regulatory Affairs

Subj: Final Temporary Debt Refinancing Regulations and Updated SBA Forms

Date: October 12, 2011

SBA's final temporary debt refinance regulations were published in today's Federal Register and are effective today, October 12, 2011. The following are the changes:

1. **Financing Business Expenses** (13 C.F.R. § 120.882(g)(6)(ii)) –A Borrower may now use its equity to finance eligible business expenses as part of the Refinancing Project provided that the amount of cash funds available to pay business expenses exceeds the amount to be paid to the lender of the Qualified Debt being refinanced. The Borrower's application must include a specific description of the business expenses to be financed and an itemization of the amount of each expense. "Eligible business expenses" means business expenses of the Borrower, such as salaries, rent, utilities, inventory, or other obligation of the business that were incurred, but not paid prior to date of the 504 Loan application or that become due for payment within 18 months after the date of the application. Both the CDC and Borrower will be required to certify in the application that the funds will be used to cover the eligible business expenses of the Borrower. The Borrower must, upon request, substantiate the use of funds to finance the business expenses (for example, through bank statements, invoices marked "paid," cleared checks, etc.). The CDC should retain the evidence of business expenses in the loan file.

2. **Third Party Lender Loan** (13 C.F.R. § 120.882(g)(5)) – The Third Party Lender Loan is no longer required to be at least 50% of the appraised value of the 504-eligible fixed assets. Now, as in the regular 504 Loan program (13 C.F.R. § 120.920(a)), the Third Party Lender Loan must be at least as much as the 504 Loan.

3. **Qualified Debt "Substantially All (85%/15%) Use of Proceeds** (13 C.F.R. § 120.882(g)(15)) – Because the Qualified Debt to be refinanced may have been refinanced one or more times previously with the Borrower using its equity at that time to finance working capital or other expenses, SBA has amended the regulation to provide that as follows: if the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the "substantially all" standard of 85% and was subsequently refinanced one or more times with the current commercial loan being the most recent refinancing, then the current commercial loan will be deemed to satisfy the "substantially all" standard. The Borrower must certify that the existing debt satisfies the applicable requirements and the Third Party Lender must certify, as part of the 504 Loan application, that it has no reason to believe that the existing debt does not satisfy these requirements.

On a random basis, SBA may require the Borrower and/or lender to submit additional documentation to support these certifications prior to closing the debenture, including the documents for the original loan used to acquire the fixed asset and subsequent refinancing documents to show that the

current commercial loan is the most recent refinancing. SBA will cancel an approved 504 Loan if the documents do not support the certifications. If the Borrower and/or lender are unable to produce the additional documentation, each must certify that it has made a diligent search for the documents and that the documents are not in its possession. SBA will not cancel an approved loan solely because the Borrower and/or lender are unable to produce the documentation unless the lender is the original lender who made the original loan to acquire the 504-eligible fixed asset (and not a lender who acquired or merged with the original lender.)

This same change in the "substantially all" standard has also been made for the 504 permanent expansion debt refinance program (13 C.F.R. § 120.882(e)(1)).

4. **Percentage Occupancy** (13 C.F.R. § 120.882(g)(15)(iii)) – The original loan may not have satisfied the percentage occupancy requirements of 51/49% for an existing building (13 C.F.R. § 120.131(b)) or 60/20/20% for new construction (13 C.F.R. §§ 120.131 and 120.870(b)). The final regulations provide that as long as the Borrower can demonstrate that it now occupies at least 51% of the building as of the date of 504 Loan application, the percentage occupancy requirements are met.

5. **Current on Payments** (13 C.F.R. § 120.882(g)(15)(vii)) – The definition of “current on all payments due for not less than one year” has been amended to allow a Borrower to be deemed current as long as during the 12-month period prior to the date of 504 Loan application, no payment was more than 30 days past due under either the original payment terms or under modified payment terms (including deferments). Any modification of payment terms must have been agreed to in writing by the Borrower and lender prior to October 12, 2011 when the final regulations were published. SBA reserves the right to decide whether modified repayment terms would preclude refinancing.

6. **6-Month Closing Period** (13 C.F.R. § 120.882(g)(12)) – Temporary debt refinance 504 Loans must be disbursed within 6 months after Loan Approval unless an extension for good cause has been granted. The SLPC has now been delegated the authority to approve extensions of the disbursement period up to an additional 3 months for good cause.

7. **Updated Processing and Closing Forms** - SBA has released updated versions of the following forms:

a. SBA Form 1244 (10-11), Application for Section 504 Loan, updated as follows:

- Page 1, Exhibit 24 - now requires only the most current debt and lien instruments
- Page 3, VII. Proposed Uses of Funds - now includes eligible business expenses under Other Expenses
- Page 12, Part D, Third Party Lender Certification - the certifications that must be included in the Third Party Lender's commitment letter (Exhibit 19) have been amended for the revised "substantially all" 85% standard and for Same Institution Debt under both temporary debt refinancing and permanent expansion refinancing

b. SLPC Eligibility Information Required for 504 Submission Non PCLP (9/30/11), updated as follows:

- Page 1, II. Size - provides that the franchise/license/dealer/jobber Certificate of No Material Change or Certificate of Material Change or Certification of Franchise Documents must be submitted to SLPC prior to 504 Loan application

- Page 3, IV. Legal Form of Entity of OC, and Page 4, V. debenture amount for small manufacturers and certain energy public policy goals - aggregate amount of outstanding SBA loans (504 or 7(a)) to EPC, OC and affiliates reworded for change in SOP 50-10(5)(D)

- Page 5, VII. Expansion Debt Refinancing - "substantially all" use of proceeds amended for change in regulations

- Page 6, VII. Temporary Debt Refinancing - amended for all the changes in final regulations

- Page 8, VIII. Conflict of Interest - adds household member of individuals serving in the legislative or judicial branches

c. SBA Form 1506 (10-11), Servicing Agent Agreement, updated as follows:

- Page 2, ¶ 2.a.(8) - now includes eligible business expenses under Other Expenses (the Use of Project Proceeds)

- Pages 4-5 - wire transfer instructions for Recipient and Correspondent Banks for wired funds for business expenses have been added

If you have any questions about the final regulations or forms, please e-mail NADCO at debtrefinance@nadco.org

NADCO also will be offering a webinar on the final temporary debt refinance regulations on Monday, October 17, 2011 at 2 PM EDT.

If you would like to access this TI Memo, the final regulations (Federal Register pp. 63151-56 (10/12/11) or the updated Form 1244, Form 1506 or SLPC Eligibility Information via the NADCO website, please click below:

TI Memo 01-12
Final Regulations
SBA Form 1244
SBA Form 1506
SLPC Eligibility Information for 504

Contact NADCO for More Information

If you have additional questions or comments on this Technical Issue Memo, please contact NADCO at (703) 748-2575, debtrefinance@nadco.org. For past TI Memos, please go to the Technical Issue Memos page on the NADCO website, www.nadco.org.