

## Office of Financial Assistance

### 504 Debt Refinancing Program

*Consolidated Appropriations Act, 2016*

1. SBA has received statutory authority to reauthorize the 504 Debt Refinance Program for up to \$7.5 billion. This is in addition to the \$7.5 billion authorization for the 504 program. With this change, total 504 lending has a \$15 billion authorization.

SBA published the Interim Final Rule on May 25, 2016 and the Policy Notice on May 26, 2016. The Interim Final Rule has a 30-day effective date after publication. ***SBA will officially launch the 504 Debt Refinancing program on June 24, 2016.***

2. On December 18, 2015, Section 521 of Division E of the Consolidated Appropriations Act, 2016 (the Act) authorized the 504 Program to be used for debt refinance.

This is a permanent change to the 504 program.

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

3. ***New! - Notices***

#### **Policy Notice 5000-1382**

All regulations and standard operating procedures of the 504 Program apply to refinancing under the Act, with some modifications, as identified in SBA Policy Notice 5000-1382.

#### **Information Notice 5000-1383**

Forms changes are identified in SBA Information Notice 5000-1383

4. ***NEW! - Fees***

For loans approved under the 504 Debt Refinancing Program during FY 2016, the total annual guarantee fee is 0.958% (95.8 basis points).

SBA will review the fee annually and issue notices of any change.

5. ***NEW! - Statutory Changes***

Three statutory modifications include:

- 1.) 504 program must be at zero-subsidy
- 2.) 504 refinance loans are limited to 50% of the CDC's previous fiscal year financing
- 3.) 504 alternative job goal in Jobs Act eliminated.

6. **NEW! - Zero Subsidy Requirement**

- 1.) Limitation of the Debt Refinancing Program to be in effect only in any fiscal year in which the subsidy costs to the Federal Government of making guarantees under the Debt Refinancing Program and under the 504 Loan Program is zero.

7. **NEW! – 50% Limit of Prior FY CDC Dollars Loaned**

- 2.) Limitation of a CDC's financings under the Debt Refinancing Program to 50% of the total dollars the CDC loaned under the 504 Loan Program (including the 504 Debt Refinancing Program) during the previous fiscal year.

**PENDING!**

*Congress has authorized for waivers to this limitation.*

*SBA will consider waivers in FY 2017, given there is less than 6 months to implement the program this fiscal year.*

*Additional guidance on waivers will be provided in SOP 50 10 6.*

8. **NEW! – Job Creation and Retention for both 504 Program and 504 Debt Refinance Program**

- 3.) Elimination of the alternative job retention goals authorized previously by the Jobs Act, and requiring all projects to adhere to 504 Program job creation and retention requirements.

9. **Clarification: Eligible Business Expenses**

**"Eligible Business Expenses"** are limited to the following business expenses:

- **"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
- **"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.

10. **NEW! - Loan to Value Limitations**

- **For projects that refinance only Qualified Debt and Other Secured Debt** - the maximum loan to value of the Refinancing Project allowed is 90%.
- **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 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.
- **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 needed to satisfy the 90% loan to value requirement set forth above will not serve to increase the amount of Business Operating Expenses that may be financed.

11. **NEW! – Streamlined 504 Debt Refinance Application and CDC Document Retention Requirements**

**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.

The borrower retains the Eligible Business Expenses documentation. It is not included in the application or retained by the CDC.

12. **NEW! – Streamlined 504 Debt Refinancing Application and CDC Documentation Requirements (cont.)**

**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 **Policy Notice 5000-1382** for not less than one year preceding the date of application. (Exhibit 21 of SBA Form 1244).

13. ***NEW! – Streamlined 504 Debt Refinancing Application and CDC Documentation Requirements (cont.)***

**Lien Verification Documentation on Debt Refinanced**

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).

**Requirements that Remain the Same as under the Jobs Act Temporary 504 Refinancing Program**

14. **Refinancing Project**

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 90% loan-to-value limitation).

15. **Qualified Debt**

Is a commercial loan:

- That was incurred not less than 2 years before the date of the application for assistance
- That is not subject to a guarantee by a Federal Agency
- The proceeds of which were used to acquire an eligible fixed asset
- Incurred for the benefit of the small business concern
- Secured by 504 eligible fixed assets
- For which the borrower has been current on all payments for not less than 1 year before the date of application.

May consist of a combination of two or more loans, provided that each of the loans satisfies the Qualified Debt requirements.

16. **Eligibility Requirements**

Project does not involve the expansion of a small business concern.

The borrower has been in operation for all of the 2-year period ending on the date of the loan.

## 17. Eligibility Requirements

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.

Any refinancing under the 504 Debt Refinancing Program must include Qualified Debt, as defined in ***Policy Notice 5000-1382***. 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.

## 18. Other Application Documentation Requirements

**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.

**Appraisals** – 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).

**Transcripts** – See updated Streamlined Documentation Process in ***Policy Notice 5000-1382***.

**Lien Verification** – See updated Streamlined Documentation Process in ***Policy Notice 5000-1382***.

## 19. Financing for Business Expenses

*See also Clarification of Definition of Eligible Business Expenses and Loan-to-Value Limitations clarifications in ***Policy Notice 5000-1382***.*

The 504 Debt Refinance Program may provide refinancing of qualified debt and other secured debt in addition to the refinancing of business expenses. SBA has updated its procedural guidance on eligible business expenses and loan to value limitations.

## 20. Application Documentation

*See also revised documentation guidance in ***Policy Notice 5000-1382***.*

An application for financing shall include a specific description of the expenses for which the additional financing is requested and an itemization of the amount of each expense.

## 21. PCLP Restriction

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.

**22. Occupancy Requirements**

Borrowers for the 504 Debt Refinance Program must meet all current 504 Loan Program occupancy requirements at the time of application.

**23. 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.

**24. 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).

**25. Same Institution Debt (cont.)**

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

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.

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.

**26. Same Institution Debt (cont.)**

The following requirements apply to the escrow account ("the account"):

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.

The Borrower's cash contribution, if any, must be deposited into the account at the time of closing of the 504 loan.

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.

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.

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

**27. 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.

### **FORM CHANGES**

**28. NEW! – Forms Changes**

Revisions have been made to **SBA Forms 1244, 2450, 2234 Parts B and C, 2288R, and 1506** to implement the debt refinancing provisions of the Act.

Additional 504 Forms were re-issued without changes to complete the forms series, including: **SBA Forms 2233, 2234 Part A, 2416, and 2288.**

Information Notice 5000-1383 outlines the changes, which are effective as of June 6, 2016.

**All applications for 504 Debt Refinancing loans must utilize the revised forms.**

**29. Form 1244 – Application for Section 504 Loan (Expiration 09-30-2016)**

- Page 1, Part A:
  - Added options to “Check if Debt Refinancing Loan Application With Expansion” or “Without Expansion” for statistical data tracking purposes
- Page 12, Part D:
  - Under Item 3, added “Option B,” for information regarding “Debt Refinancing Without Expansion”

**30. Form 2450 – Eligibility Information Required for 504 Submission (Non-PCLP) (Expiration 09-30-2016)**

- Pages 3-4, Section V:
  - Added language related to loan eligibility in the case that debt refinance is included in project costs without expansion
  - Revised (d) to “Is secured by 504 Eligible Fixed Assets.”
  - Revised (f) to “...the applicant has been current on all payments due for not less than one year prior to the date of application, (which means that no payment was more than 30 days past due from either the original payment terms or modified payment terms if such modification (including deferments) was agreed to in writing no less than one year prior to the date of application).

**31. Form 2234, Part B – Supplemental Information for PCLP Processing (Expiration 09-30-2016)**

- Page 2:
  - Revised language in “Use of Loan Proceeds” related to “Other Expenses” for consistency with Form 1244

**32. Form 2234, Part C – Eligibility Information Required for 504 Submission (PCLP) (Expiration 09-30-2016)**

- Page 7-10, Section VII:
  - Added language related to loan eligibility in those cases when debt refinance is included in project costs without expansion
  - Revised (d) to “Is secured by 504 Eligible Fixed Asset”
  - Revised (f) to “...the applicant has been current on all payments due for not less than one year prior to the date of application, (which means that no payment was more than 30 days past due from either the original payment terms or modified payment terms if such modification (including deferments) was agreed to in writing no less than one year prior to the date of application).

**33. Form 2288R – Interim Lender Certification for Refinanced Loan (Version 02-16)**

(Formerly known as Form 2288TR Interim Lender Certification for Temporary Refinancing Program)

- Updated title of form to reflect permanent debt refinancing program
- Changed form number from 2288TR to 2288R
- Page 1: Added language regarding timing of the Interim Lender Certification (i.e. “not more than 60 days prior to debenture funding”)
- Page 3: Revised the text of the Interim Lender Certification

**34. Form 1506 – Servicing Agent Agreement (Expiration 05-31-2019)**

- Page 1:

- Added options to “Check if Debt Refinancing Loan Application With Expansion” or “Without Expansion” for statistical data tracking purposes.
- Page 2:
  - Removed references to Recovery Act and Small Business Jobs Act.

**EXAMPLES – 504 DEBT REFINANCING DEAL STRUCTURES**

35. **Ineligible Request:** Refinance \$ XXX,XXX (any amount of business loans) none of which are secured by fixed assets.

**Acceptable Structure:** None

**Comments:** There is no Qualified Debt to refinance so the project would not be eligible under this program. Each project must have a Qualified Debt to be eligible.

36. **Request:** Refinance \$100K existing acquisition mortgage plus \$400K 2nd mortgage borrowed 5 years ago for other business purposes. Property is appraised at \$1,000,000.

**Acceptable Structure:**

Appraised value of Property	\$ 1,000,000
Qualified Debt	\$ 100,000
Other Secured Debt	\$ 400,000
Total Project Financing	\$ 500,000
Third Party Loan	\$ 250,000
SBA 504 Loan	\$ 250,000
Borrower Equity Contribution	\$ 500,000

**Comments:** All eligible. Project financing (TPL loan + 504 debenture) is \$500,000. TPL loan amount must be equal to or greater than the debenture amount, at least \$250,000 in this example.

37. **Request:** Refinance \$300K existing Qualified Debt plus \$400K for other unsecured loan obligations and Business Operating Expenses. Property is appraised at \$1,000,000.

**Acceptable Structure:**

Refinancing Project (Appraisal)	\$ 1,000,000
Qualified Debt	\$ 300,000
Business Operating Expenses	\$ 250,000
Total Project Financing	\$ 550,000
Third Party Loan	\$ 275,000
SBA 504 Loan	\$ 275,000
Borrower Equity Contribution	\$ 450,000

**Comments:** The \$300K Qualified Debt can be included but only \$250K of the requested \$400K in Business Operating Expenses can be included. Business Operating Expenses are limited to 25% of the Refinance Project amount. In this case \$250K. Total LTV remains below the 75% maximum for transactions involving Business Operating Expenses.

38. **Request:** Refinance three Qualified Debt mortgages totaling \$1,250K. Loan #1 to buy the land, Loan #2 to build the building, Loan #3 for property improvements. Property is appraised at \$1,000,000.

**Acceptable Structure #1 (with \$350K cash to close):**

Refinancing Project (Appraisal)	\$ 1,000,000
Qualified Debt	\$ 900,000
Third Party Loan	\$ 500,000
SBA 504 Loan	\$ 400,000
Borrower Equity Contribution	\$ 100,000

**Acceptable Structure #2 (add eligible fixed assets):**

Refinancing Project (Appraisal)	\$ 1,389,000
Qualified Debt	\$ 1,250,000
Third Party Loan	\$ 694,500
SBA 504 Loan	\$ 555,500
Borrower Equity Contribution	\$ 139,000

**Comments:** Applicant would have to put in \$350K cash or add additional eligible assets with an appraised value sufficient to increase the Refinance Project to \$1,389K and maintain the required 10% equity. 90% LTV acceptable as no funds provided for Business Operating Expenses.

**39. Request:** Refinance \$500,000 in Qualified Debt plus \$200,000 in secured debt borrowed 3 years ago for equipment purchases and inventory, plus \$50,000 for next year's salary for an additional employee. Property is appraised at \$1,000,000.

**Acceptable Structure:**

Refinancing Project (Appraisal)	\$ 1,000,000
Qualified Debt	\$ 500,000
Other Secured Debt	\$ 200,000
Business Operating Expenses	\$ 50,000
Total Project Financing	\$ 750,000
Third Party Loan	\$ 375,000
SBA 504 Loan	\$ 375,000
Borrower Equity Contribution	\$ 250,000

**Comments:** The request meets program guidelines. The Business Operating Expenses do not exceed 25% of the Refinance Project and the total LTV does not exceed 75%. Please note that normal 504 closing costs are considered part of the Refinance and are not subject to this limit.

**40. Request:** Refinance \$100,000 Qualified Debt plus \$650,000 to cover other obligations and/or business expenses, some of which will be incurred in the following 6 months. Property is appraised at \$1,000,000.

**Acceptable Structure:**

Refinancing Project (Appraisal)	\$ 1,000,000
Qualified Debt	\$ 100,000
Business Operating Expenses	\$ 250,000
Total Project Financing	\$ 350,000
Third Party Loan	\$ 175,000
SBA 504 Loan	\$ 175,000
Borrower Equity Contribution	\$ 650,000

**Comments:** The Qualified Debt is eligible however only \$250,000 of the request for Business Operating Expenses is eligible. These expenses are limited to 25% of the Refinance Project amount.

41. For more information about the 504 Debt Refinancing Program, contact:

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**Please direct questions to Babak Hosseini and Linda Reilly.**