

SBA Policy Notice

TO: All SBA Employees and Certified
Development Companies

CONTROL NO.: 5000-1939

SUBJECT: Changes to 504 Debt Refinancing
Program

EFFECTIVE: 11/17/2016

The Small Business Jobs Act of 2010 (Pub. 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 existing debt that does not involve an expansion of the business (504 Debt Refinancing Program). The 504 Debt Refinancing Program expired on September 27, 2012, and was reauthorized on December 18, 2015 with the enactment of the Consolidated Appropriations Act, 2016 (the Act), Public Law 114-113.

SBA published an Interim Final Rule on Wednesday, May 25, 2016, that conformed the current regulations on debt refinancing (13 CFR 120.882(g)) to the statutory changes made by the Act, and that also invited comments on all aspects of the 504 Debt Refinancing Program. In addition, SBA issued Policy Notice 5000-1382 (Policy Notice) on May 26, 2016, to provide further guidance on the program requirements specific to the 504 Debt Refinancing Program. The comment period on the Interim Final Rule expired on July 25, 2016, and SBA received comments that recommended changes to certain aspects of the guidance provided in the Policy Notice. After considering the comments, SBA is making the changes described below. Unless otherwise stated in this Notice, the guidance in Policy Notice 5000-1382 remains in effect. SBA will address all of the comments in its forthcoming Final Rule.

The following issues are addressed in this Notice:

- (1) Eligibility – New Business.
- (2) Loan-to-Value Limitation for the Financing of “Business Operating Expenses” increased from 75% LTV to 85% LTV.
- (3) Appraisals allowed to be dated within one year of 504 loan approval instead of 6 months.
- (4) Option to use Interim Loan or Escrow Account for same institution debt.
- (5) Guidance regarding requests to waive, for good cause, the requirement that a 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.

504 Debt Refinancing Program Requirements

- (1) Eligibility– New Business. 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 during this two year period, the CDC must follow the new business guidance in SOP 50 10 5 (H) and determine whether the Borrower is considered a new business, and document the justification for its determination in its credit memorandum. SOP 50 10 5 (H) defines “New Business” as follows:

New Business is a business that is 2 years old or less at the time the loan is approved. A business that is more than 2 years old at the time the loan is approved may be considered a

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New Business if it is a change of ownership that will result in new, unproven ownership/management and increased debt unrelated to business operations. * * *

SOP 50 10 H, Subpart C, Chapter 1, ¶ III.P.

- (2) Loan-to-Value Limitation Update for the Financing of “Business Operating Expenses” from 75% LTV to 85% LTV:
- a. There is no change to the LTV for Qualified Debt and Other Secured Debt. Both will remain 90%.
 - b. For any projects that include the financing of “Business Operating Expenses,” a maximum 85% 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.
- (3) Appraisal. Appraisals are not required at time of application, but must be submitted to and approved by the SLPC prior to closing. Appraisals must be dated no earlier than 1 year prior to the date the application was approved, and must otherwise comply with the requirements for appraisals set forth in SOP 50 10 5 (H).

(4) Same Institution Debt/Escrow Account Option

When the loan being refinanced is Same Institution Debt, either an Interim Loan or an escrow account may be used, and:

- (A) 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.
- (B) The CDC may 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”):
 - (i) The escrow 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 escrow agent may be the CDC attorney, Title Company, or other party approved by SBA District Counsel.
 - (ii) The Borrower’s cash contribution, if any, must be deposited into the account at the time of closing of the 504 loan.
 - (iii) 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.
 - (iv) 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.
 - (v) The debt to be refinanced will be satisfied by payment of the escrowed funds to the Third Party Lender.

(5) Waiver Guidance

The Act requires that 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, but allows this limitation to be waived. SBA will consider the following factors in determining whether there is good cause for the Borrower to obtain the refinancing through the CDC that exceeds the 50% requirement:

- Whether the Borrower has access to other sources of financing, including other CDCs that have not exceeded their 50% cap; and
- Whether the CDC has an existing 504 loan with the Borrower that is in current status.

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Administrator

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