



SBA Policy Notice

TO: All SBA Employees

CONTROL NO.: 5000-1225

SUBJECT: Additional Changes to 504 Certified
Development Company Loan Program
Regarding Debt Refinancing Authorized
by the Jobs Act

EFFECTIVE: 10/19/2011

On October 12, 2011, SBA published in the Federal Register the final rule to implement the temporary debt refinancing program authorized by section 1122 of the Small Business Jobs Act of 2010, P.L. 111-240 (Jobs Act). See (76 FR 63151-63156). The final rule makes several changes to the interim final rule that was published on February 17, 2011 (76 FR 9213-9219) in order to make the program benefits available to more small businesses.

This Policy Notice provides further guidance with respect to the regulatory changes affecting the definition of qualified debt, the financing of business expenses, and the Third Party Loan contribution, as well as with respect to the use of an Interim Lender or escrow account, and is effective immediately. It supplements the guidance that SBA provided in Policy Notice 5000-1197, effective February 17, 2011, Policy Notice 5000-1204, effective April 8, 2011, and Procedural Notice 5000-1212, effective June 20, 2011 (collectively referred to as "Notices"). To the extent that any provision of this Notice conflicts with any provision in the earlier Notices, the provisions of this Notice control.

(1) Qualified Debt.

(a) Proceeds of Existing Debt Used For Eligible Fixed Asset(s). To satisfy the requirement that the proceeds of the existing debt being refinanced were used to acquire an Eligible Fixed Asset, either:

(i) substantially all (85% or more) of the proceeds of the existing debt was used to acquire an Eligible Fixed Asset(s) and the remaining amount (15% or less) was incurred for the benefit of the small business seeking the refinancing; or

(ii) if the Eligible Fixed Asset(s) was originally financed through a commercial loan (the "original loan") that was subsequently refinanced one or more times:

(A) substantially all (85% or more) of the proceeds of the original loan was used to acquire an Eligible Fixed Asset(s) and the remaining amount (15% or less) was incurred for the benefit of the small business seeking the refinancing; and

(B) the existing debt is the most recent refinancing of the original loan.

(b) Certification. At application, the Borrower and the CDC must certify that the existing debt satisfies the requirement of either paragraph (1)(a)(i) or paragraph (1)(a)(ii) above (See 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 existing debt does not satisfy that requirement (See Exhibit 19 of SBA Form 1244) as instructed in SBA Form 1244 Part D.

(c) Random Sampling. SBA may require, on a random basis, that the Third Party Lender and/or Borrower submit further documentation prior to the closing on the 504 debenture to support the Certifications, including the documents for the original loan with which the Eligible Fixed Asset was

EXPIRES: 10/1/2012

PAGE 1 of 3

SBA Form 1353.1 (12-93) MS Word Edition; previous editions obsolete
Must be accompanied by SBA Form 58

acquired and the subsequent refinancing documents to show that the current commercial loan is the most recent refinancing. SBA will cancel an approved loan if the documents provided do not support the Certifications. If the Borrower and/or lender are unable to produce the additional documentation, each must certify that they have made a diligent search for the documents and that the documents are not in their possession. SBA will not cancel an approved loan based solely on the inability of the Borrower and/or lender to produce the documents. However, if the lender is the original lending institution that made the loan that acquired the Eligible Fixed Asset (not, for example, an institution that acquired or merged with the original lending institution), SBA would expect that this lender would be able to produce the necessary documents.

(d) Current on All Payments Due. One of the eligibility criteria for this refinancing program is that the Borrower has been current on all payments for the existing debt not less than 1 year before the date of application. For the purposes of this temporary program, the final rule revised the definition of “current on all payments due” to mean that “no payment scheduled to be made during the one year period 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 lender of the existing debt prior to October 12, 2011, 13 CFR 120.882(g)(15) (definition of “qualified debt”). SBA will consider any modifications that have been made to the payment terms as part of its assessment of the creditworthiness of the Borrower. Any delinquency on the loan to be refinanced after approval and before debenture funding must be reported to SBA as an adverse change.

(e) Compliance with Leasing Policies. With respect to situations where the Borrower leased the property acquired with the original loan to one or more tenants, the final rule provides that, if the original loan was for the construction of a new building, or the acquisition, renovation, or reconstruction of an existing building, and such loan would not have satisfied the leasing policies set forth in 13 CFR 120.131 and 13 CFR 120.870(b), the current commercial loan will be eligible for assistance if the Borrower is able to demonstrate compliance with 13 CFR 120.131 (b) for existing buildings as of the date of application.

(2) Amount of Third Party Loan and 504 Loan. Instead of limiting the Refinancing Project to no more than the outstanding principal balance of the Qualified Debt, the portion of the Refinancing Project provided by the Third Party Loan and the 504 loan may be no more than 90% of the fair market value of the fixed assets securing the loans.

(3) Financing of Business Expenses. A Borrower may request the financing of eligible business expenses as part of its application for the Refinancing Project. “Eligible business expenses” means the business expenses of the Borrower, such as salaries, rent, utilities, inventory, or other obligations of the business that were incurred but not paid prior to the date of loan application or that will become due for payment within eighteen months after the date of loan application. Such financing will be available if the amount of cash funds that will be provided for the Refinancing Project exceeds the amount to be paid to the lender of the Qualified Debt.

(a) The Borrower’s application must include a specific description of the business expenses for which the financing is requested and an itemization of the amount of each expense, along with a certification as to the accuracy of this information. If the application is approved and funds are disbursed for this purpose, Borrower must be able to substantiate the use of the funds provided for business expenses through its business records, such as bank statements, invoices marked “paid”, cleared checks, and any other documents that demonstrate that a business obligation was satisfied with the funds provided. This documentation must be available to SBA and the CDC upon request.

(b) The CDC must conduct such review and inquiry of Borrower's request for the financing of business expenses so as to be able to certify in the application that the funds will be used to cover the eligible business expenses of the Borrower.

(4) Third Party Loan Contribution. Instead of requiring the Third Party Loan to contribute not less than 50% of the Refinancing Project amount, the Third Party Loan must total at least as much as the 504 loan.

(5) Use of Interim Lender or Escrow Account.

(a) When the loan being refinanced is Same Institution Debt, the use of an escrow account is not required; instead, the Borrower will have the option of using either an Interim Lender or an escrow account. If an escrow account is used, then the requirements outlined in Policy Notice 5000-1204 must be followed. While generally it may be more beneficial to the Borrower in the case of Same Institution Debt to close its loans using an escrow account, there are circumstances which would make using an Interim Lender more advantageous to the Borrower. For example, where multiple loans are being refinanced and only one is Same Institution Debt, using an Interim Lender may simplify the transaction for the Borrower. The CDC must ensure that the option used is the one that is most favorable to the Borrower.

(b) For clarification, the first sentence on page 2 of Policy Notice 5000-1204, effective 4/8/11, "Modification or Assignment of Existing Loan Documents" is revised to read as follows: "With respect to other institution debt (*i.e.*, debt that 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."

Karen G. Mills
Administrator