



## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 120**

#### **RIN 3245-AH78**

#### **Debt Refinancing in the 504 Loan Program**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** SBA is adopting with changes the interim final rule published in the **Federal Register** on July 29, 2021. That interim final rule implemented section 328 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, which modified the requirements for refinancing debt in the 504 Loan Program, as set forth in section 521(a) of title V of division E of the Consolidated Appropriations Act, 2016 and section 502(7) of the Small Business Investment Act of 1958. The modifications included: increasing the amount of existing indebtedness that may be refinanced for 504 debt refinancing involving expansions; and for 504 debt refinancing not involving expansions, removing two limitations on the program, reinstating an alternate job retention standard for the refinancing project, revising the definition of qualified debt, and removing the prohibition against Certified Development Companies (CDCs) participating in the Premier Certified Lenders Program using their delegated authority to make these loans.

**DATES:** The effective date of this final rule is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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## **SUPPLEMENTARY INFORMATION:**

### I. Background Information

The 504 Loan Program is an SBA financing program authorized under title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 *et seq.* The core mission of the 504 Loan Program is to provide long-term financing to small businesses for the purchase or improvement of land, buildings, and major equipment, in an effort to facilitate the creation or retention of jobs and local economic development. Under the 504 Loan Program, loans are made to small business applicants by Certified Development Companies (“CDCs”), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (a “504 Project”) includes: a loan obtained from a private sector lender with a senior lien covering at least 50 percent of the project cost; a loan obtained from a CDC (a “504 Loan”) with a junior lien covering up to 40 percent of the total cost (backed by a 100 percent SBA-guaranteed debenture); and a contribution from the Borrower of at least 10 percent equity.

In addition, the 504 Loan Program may be used to refinance debt under two options authorized under section 502(7)(B) and (C) of the Small Business Investment Act of 1958. First, if a 504 Project involves the expansion of the small business, any amount of existing indebtedness that does not exceed 50 percent of the project cost of the expansion may be refinanced and added to the project’s cost (Debt Refinancing with Expansion) under the conditions set forth in section 502(7)(B) and the implementing regulations. *See* 13 CFR 120.882(e) and (f). Second, debt refinancing is available for a 504 Project that does not involve the expansion of the small business under the requirements set forth in section 502(7)(C) and 13 CFR 120.882(g) (Debt Refinancing without Expansion).

Section 328(a) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted December 27, 2020, Public Law 116-260, revised the conditions and requirements for refinancing debt in the 504 Loan Program as follows:

(1) With respect to Debt Refinancing with Expansion, 13 CFR 120.882(e), the Economic Aid Act increased the amount of existing indebtedness that may be refinanced as part of a 504 Project from not more than 50 percent of the project cost of the expansion to not more than 100 percent of the project cost;

(2) With respect to Debt Refinancing without Expansion, 13 CFR 120.882(g), the Economic Aid Act:

(a) Eliminated the condition that this program shall only be in effect in any fiscal year during which the cost to the Federal Government of making guarantees under 13 CFR 120.882(g) and under the 504 Loan Program is zero;

(b) Eliminated the requirement that a CDC limit its financing under the 504 Loan Program so that, during any Federal fiscal year, new financings under 13 CFR 120.882(g) do not exceed 50% of the dollars the CDC loaned under the 504 Loan Program, including under 13 CFR 120.882(g), during the previous fiscal year, unless otherwise waived;

(c) Eliminated the prohibition against Premier Certified Lender Program (PCLP) CDCs using delegated authority to approve loan applications for Debt Refinancing without Expansion;

(d) Reinstated an alternate job retention standard that was previously removed from the Debt Refinancing without Expansion Program by section 521 of division E of the Consolidated Appropriations Act, 2016 (2016 Consolidated Appropriations Act), enacted on December 18, 2015, Public Law 114-113;

(e) Revised the definition of “qualified debt” to mean debt that was incurred not less than six months before the date of application instead of two years before the date of application;

(f) Removed from the definition of “qualified debt” condition that the debt not be subject to a guarantee by a Federal agency; and

(g) Eliminated from the definition of “qualified debt” the requirement that the borrower be current on all payments for not less than one year before the date of the application for refinancing.

As described in the section-by-section analysis below, SBA is issuing this final rule to adopt the previously published interim final rule and to conform the current rules to the requirements of the Economic Aid Act.

## II. Section-by-Section Analysis of Comments and Changes

On July 29, 2021, SBA published in the **Federal Register** an interim final rule implementing section 328(a) of the Economic Aid Act. 86 FR 40775. Although effective immediately, the interim final rule included a request for comments seeking input from the public. The comment period for the interim final rule was open from July 29, 2021, until October 8, 2021. SBA received 79 comments of which many were duplicative. Of the unique comments received, two were from national trade associations, 68 were from Certified Development Companies, one (1) was from a bank, one (1) from a private industry, and four (4) from individuals. This section includes a description of the comments received and is organized by the rules being revised. SBA received comments from a national trade association and 63 CDCs recommending changes beyond the scope of this rule that will not be addressed in this final rule.

## III. Section-by-Section Analysis

Section 120.882(e). In the interim final rule SBA revised this provision by increasing the amount of existing indebtedness that may be refinanced to no more than 100 percent of the project cost (from 50 percent of the project cost) to conform with the amendments to section 502(7)(B) of the Small Business Investment Act made by section 328(a)(2)(A) of the Economic Aid Act. SBA did not receive any comments on this change and is adopting this change as set forth in the interim final rule.

Section 120.882(g)(3). In the interim final rule SBA removed the requirement that the approval of a Refinancing Project is subject to the requirement that the cost to the Federal Government of making guarantees under 13 CFR 120.882(g) and under the 504 Loan Program is zero during the fiscal year in which the guarantee is made in accordance with section 328(a)(1) of the Economic Aid Act, which repealed this statutory requirement set forth in the 2016 Consolidated Appropriations Act.

In its place SBA inserted a provision that set forth the conditions and requirements that apply to the refinancing of a loan that is subject to a guarantee by a Federal agency or department. As indicated above, the Economic Aid Act removed the prohibition against refinancing a loan that is subject to a guarantee by a Federal agency or department. Although these loans may now be refinanced if the refinancing project does not involve expansion, the loan must comply with the following conditions and requirements:

(1) for an existing 504 loan, either both the Third Party Loan and the 504 loan must be refinanced, or the Third Party Loan must have been paid in full; and

(2) for an existing 7(a) loan, the CDC must verify in writing that the present lender is either unwilling or unable to modify the current payment schedule. In addition, in the case of same institution debt, if the Third Party Lender or the CDC affiliate as authorized under 13 CFR 120.820 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.

(3) the refinancing of any federally-guaranteed loan must provide a substantial benefit to the borrower. “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 (including any subsidy recoupment fee), financing fees, and other financing costs must be added to the amount being refinanced in calculating the percentage reduction in the new installment payment. The portion of the new installment amount attributable to Eligible Business Expenses will not need to be included in this calculation. The rule allows the Director, Office of Financial Assistance (D/FA) or designee, to approve an exception to the 10 percent reduction requirement for good cause and does not allow PCLP CDCs to use their delegated authority to approve a loan requiring this exception.

SBA received 66 comments on this rule change, of which 50 supported the rule change with modifications. There were no comments opposing the rule change.

A national trade association and its member CDCs requested that SBA not include in regulation any conditions or requirements that restrict or limit the ability to refinance a loan that is subject to a guarantee by a Federal agency or department as no such conditions or restriction exists in statute or in the Economic Aid Act (EAA) update.

The national trade association and its member CDCs also recommended that SBA remove the requirement that CDCs obtain written verification of the existing 7(a) lender’s inability or unwillingness to modify the current payment schedule as a requirement to allowing the refinance of an existing 7(a) loan. The national trade association asked that the ability to refinance an existing 7(a) loan be unfettered and guided by what is in the best interest of the borrower.

Another national trade association proposed safeguards of increasing the substantial benefit requirement for both 7(a) and 504 programs, which include, but are not limited to, the SBA issuing specific guidance on the underwriting for both programs. In addition, to protect the borrower from paying additional and significant fees, the national trade association recommended the SBA limit fees for new 504 loans. SBA feels that increasing the substantial benefit requirement as requested in a rising interest rate environment would not be in the best interest of the small business borrower.

Based on the public comments received, SBA is revising this rule to remove the requirement that CDCs and 7(a) lenders be given the opportunity to modify existing debt. Instead, SBA is transferring the burden of contacting the CDC or 7(a) lender whose debt is being refinanced from the borrower to the CDC that will be packaging the 504 loan for the borrower. The revised rule requires the CDC to notify in writing (by email or letter) the existing CDC or 7(a) lender to advise them in advance when a government guaranteed loan is being refinanced.

Section 120.882(g)(11). In the interim final rule SBA removed the section that states PCLP CDCs may not use delegated authority to approve refinancing under 13 CFR 120.882(g), in accordance with section 328(a) of the Economic Aid Act, which removed this statutory prohibition. In its place, the interim final rule stated that PCLP CDCs may not approve the refinancing of same institution debt under their delegated authority and must submit the loan to SBA for approval. This requirement is consistent with SBA's long-standing policy of prohibiting its participating lenders from using their delegated authority to approve the financing of same institution debt due to the potential conflict of interest and the risk of the 504 loan proceeds being used to shift to SBA a potential loss from the existing debt. SBA did not receive any comments on this change and is adopting this change as set forth in the interim final rule.

Section 120.882(g)(15). In the interim final rule SBA redesignated paragraph (g)(15), Definitions, as paragraph (g)(16), and added a new paragraph (g)(15) to set forth the alternate job retention standard that was reinstated by section 328(a) of the Economic Aid Act. Under this alternate job retention standard, for a Refinancing Project under 13 CFR 120.882(g) the debt does not need to meet the job creation or other economic development objectives set forth in 13 CFR 120.861 or 120.862, provided that the 504 loan does not exceed the product obtained by multiplying the number of employees of the borrower by \$75,000. On May 11, 2023, SBA published in the **Federal Register** a notice announcing an increase to the job creation or retention standards for the 504 Loan Program to reflect increases in the Consumer Price Index (CPI) for All Urban Consumers. 88 FR 30379. This included increasing the amount per Job Opportunity that a 504 Loan Project must create or retain from \$75,000 to \$90,000. Accordingly, the amount set forth in 13 CFR 120.882(g)(15) is adjusted from \$75,000 to \$90,000.

The alternate job retention standard provides that the number of employees of a borrower is equal to the sum of:

(1) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

(2) the product obtained by multiplying:

(a) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph, by

(b) the quotient obtained by dividing the average number of hours each part-time employee of the borrower works each week by 40.

An example of how this standard is calculated is included in the text of the rule.

SBA did not receive any comments on this adjustment. The final rule adopts the interim final rule with one change, namely an increase in the amount per Job Opportunity

that a 504 Loan Project must create from \$75,000 to \$90,000 as per SBA's announcement in the Federal Register on May 11, 2023.

Section 120.882(g)(16). As stated above, SBA redesignated paragraph (g)(15), Definitions, as paragraph (g)(16) and made five changes to the definition of "Qualified debt". First, paragraph (i) of the definition of "Qualified debt" (redesignated as paragraph (A)) previously required that the debt must not have been incurred less than two years before the date of the application for refinancing. However, section 328(a) of the Economic Aid Act shortened this period to six months before the date of the application for refinancing. Accordingly, SBA revised this paragraph by replacing two years with six months.

Second, paragraph (i) of the definition of "Qualified debt" (redesignated as paragraph (A)) previously allowed a loan that was refinanced within the two years before the date of application (the most recent loan) to be deemed incurred not less than two years before the date of the application provided that the effect of the most recent loan was to extend the maturity date without advancing any additional proceeds. With the minimum age of the qualified debt shortened from two years to six months, SBA believed that it was no longer necessary to address this situation and therefore SBA removed the second and third sentences of paragraph (i) (redesignated as paragraph (A)).

Third, paragraph (ii) of the definition of "Qualified debt" previously excluded debt that was subject to a guarantee by a Federal agency or department. As stated above, section 328(a) of the Economic Aid Act removed this statutory exclusion and SBA consequently removed this paragraph and renumbered the remaining paragraphs accordingly. The conditions and requirements that apply to the refinancing of a loan that is subject to a Federal guarantee are set forth in paragraph (g)(3).

Fourth, paragraph (vi) of the definition of "Qualified debt" previously excluded a Third Party Loan that is part of an existing 504 Project. However, under the new

paragraph (g)(3), an existing 504 loan may be refinanced when both the Third Party Loan and the 504 loan are being refinanced. Accordingly, SBA revised this paragraph, which was redesignated as paragraph (E), to incorporate this exception to the general prohibition against a qualified debt including a Third Party Loan.

Fifth, paragraph (vii) of the definition of “Qualified debt” previously reflected the statutory requirement that, for the debt to qualify for refinancing, the applicant had to be current on all payments due for not less than one year preceding the date of application. Because section 328(a) of the Economic Aid Act removed this requirement from section 502(7)(C) of the Small Business Investment Act, SBA removed this paragraph from the regulations. In accordance with prudent lending standards, SBA expects CDCs to consider whether the applicant is current on all payments due, and the applicant’s history of delinquency, in its credit analysis. SBA did not receive any comments on these specific revisions and is adopting the revisions as set forth in the interim final rule.

SBA did however receive comments from a national trade association and its member CDCs requesting that SBA lower the Qualified debt definition’s standard of “substantially all (85% or more)” to a “majority” standard of 51% or more to increase access to and utilization of 504 debt refinancing. SBA agrees that a decrease to the “substantially all” standard would increase refinancing opportunities for small businesses. Neither the Small Business Act nor the Small Business Investment Act define or test for “substantially all.” The 85% “substantially all” standard in paragraph (g) was established with regulations implementing section 1122 of the Small Business Jobs Act of 2010. 76 FR 9213. SBA is modifying the “substantially all” definition to 75% from 85% with the remainder being adjusted to 25% from 15%. SBA has determined that “substantially all” is not 51%.

Finally, the phrase “Same institution debt” was previously used with Debt Refinancing without Expansion only in reference to the Third Party Loan, *see* 13 CFR

120.882(g)(13), and, thus, the definition of “same institution debt” referenced only the Third Party Lender. With the requirement in 13 CFR 120.882(g)(11) that PCLP CDCs cannot use their delegated authority to approve the refinancing of same institution debt in the Debt Refinancing without Expansion program, SBA revised the definition of “Same institution debt” to also mean the debt of the CDC (or its affiliates) that is providing funds for the refinancing. SBA did not receive any comments on this change and is adopting this change as set forth in the interim final rule.

Section 120.883(e). SBA currently allows certain administrative costs that are not part of Project costs to be paid with the proceeds of the 504 loan and the Debenture. 13 CFR 120.882. This includes CDC Closing Fees up to a maximum of \$2,500. 13 CFR 120.882(e).

Since the publication of the interim final rule SBA conducted a series of roundtable discussions with CDCs and lenders at annual and regional events. In alignment with the adjustment with jobs created/retained due to the CPI, SBA received multiple comments during the regional roundtables for an inflation adjustment also to update § 120.883, Eligible administrative costs for 504 loans, in paragraph (e) which currently limits of the amount of CDC closing fees allowed to be included in 504 financing portion of a project to be capped at \$2,500. In alignment with these changes and in an attempt to keep the limit of CDC closing costs relevant to administrative costs, SBA is proposing an increase to the legal fees. According to the public comments, this cap does not reflect current administrative costs and creates a burden on the borrower to pay for closing expenses from its own account. In the final rule, SBA increases the amount from \$2,500 to \$10,000.

**Compliance with Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act (5 U.S.C. 801-808), Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)**

**Executive Orders 12866 and 13563**

The Office of Management and Budget (OMB) has determined that this rule constitutes a “significant regulatory action” for purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866, section 6(a)(3)(D), based on the need to move expeditiously to mitigate the current conditions arising from the COVID-19 pandemic.

As shown in Table 1 below, during the five-year period spanning fiscal year (FY) 2018 and FY 2022, a total of 38,022 504 loans were approved for a total gross approval amount as of September 30, 2022, of \$32,965,182,830. In addition, during this five-year period, SBA approved 247 debt refinance with expansion loans on average per year with an average annual dollar volume of \$309,165,400, and approved 451 debt refinance without expansion loans on average per year with an average annual dollar volume of \$469,596. The Economic Aid Act passage increased the debt refinance with expansion from 50 percent of a project to 100 percent of a project. Prior to this change, of the debt refinance with expansion loans, only 16 refinanced a debt that equaled 50 percent of the expansion costs; if these borrowers had been able to refinance 100 percent of the expansion costs instead of 50 percent, and assuming that all these borrowers did so, these borrowers would have been able to borrow \$15 million more over five years, or about \$3 million more annually. Since the passage of the Economic Aid Act, and the issuance of the interim final rule, there have been 746 504 loan refinancing with expansion projects approved for a total of \$1,030,563,000 approved. This legislative change has expanded the access to capital to small business for expansion projects that also need debt refinancing.

Table 1. 504 Loan Activity FY 2018 - FY 2022

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Total Number of 504 Loans	5,874	6,099	7,119	9,676	9,254	3,844
Total Dollar Volume of 504 Loans Approved	\$4,753,644,000	\$4,958,552,000	\$5,826,885,000	\$8,218,105,540	\$9,207,996,290	\$3,533,163,000
Number of 504 Debt Refi With Expansion	181	181	236	301	336	109
Dollar Volume of 504 Debt Refi With Expansion	\$212,098,000	\$192,968,000	\$296,392,000	\$389,801,000	\$454,568,000	\$186,194,000
Number of 504 Debt Refi Without Expansion	181	166	386	693	829	249
Dollar Volume of 504 Debt Refi Without Expansion	\$154,062,000	\$154,842,000	\$370,160,000	\$709,020,000	\$959,897,000	\$270,151,000

Table 2. 504 Loan Activity by Defined Cohort August 2018 – July 2023

	Aug'18-Jul'19	Aug'19-Jul'20	Aug'20-Jul'21	Aug'21-Jul'22	Aug'22-Jul'23
Total Number of 504 Loans	6,153	6,836	9,572	9,392	6,253
Total Dollar Volume of 504 Loans Approved	\$5,063,078,000	\$5,575,249,000	\$7,934,192,540	\$9,248,887,290	\$6,624,952,000
Number of 504 Debt Refi With Expansion	183	243	295	332	183
Dollar Volume of 504 Debt Refi With Expansion	\$191,786,000	\$309,027,000	\$362,039,000	\$446,975,000	\$305,619,000
Number of 504 Debt Refi Without Expansion	160	302	66	934	388
Dollar Volume of 504 Debt Refi Without Expansion	\$157,880,000	\$295,396,000	\$601,831,000	\$1,057,386,000	\$432,638,000

Data as of 9/15/2023, total dollar volume is lifetime gross approval amount including increases.

This rule was necessary to implement the Economic Aid Act and provide economic relief to small businesses adversely impacted by COVID-19. SBA anticipates that finalizing these changes to the 504 debt refinancing programs will continue to result in benefits to small businesses by providing greater flexibility to restructure debt.

To assess the impact of the interim final rule, SBA evaluated 504 loan activity (including the number of loans and dollar volume of both debt refinance with and without expansion) between August 2018 and July 2023. Because the interim final rule was published on July 29, 2021, with immediate effectiveness, the first full month during which the modifications to 504 debt refinancing were available was August 2021, with August 2021 through July 2022 being the first 12-month period during which the modifications to 504 debt refinancing were available to 504 applicants. SBA divided the data into five cohorts of 12 months each, with the first cohort beginning in August 2018 and the last cohort beginning August 2023. See Table 2.

As an appropriate baseline for evaluation of the impacts of the interim final rule that would be made permanent in this rule, SBA considers the state of 504 lending for debt refinance with expansion and without expansion before July 2021. SBA examines the 12-month periods from August 1, 2018, through July 31, 2019, to the period from August 1, 2022, to July 31, 2023, noting that external influences from the pandemic and from the payments made on behalf of borrowers by SBA under section 1112 of the Coronavirus Aid Recovery, and Economic Security Act (Section 1112 Payments) that ended in September 2021 occurred. The Section 1112 Payments required SBA to make principal and interest payments on 504 loans for certain periods of time depending on when the 504 loan was approved, which would have made a 504 loan an attractive option for small businesses and consequently would have increased 504 loan volume. Further, interest rates on 504 loans in these two periods differ, from a range of approximately 4.0 to 5.0 percent in the earlier period to rates up to 7.0 percent in the later period, as do rates on alternatives to 504 loans. These changes mean that lending total volume comparisons may not be appropriate for assessment of impact. Because the major changes in the interim final rule were the increases in the amounts of existing indebtedness that may be refinanced for both 504 debt involving expansions and 504 debt not involving

expansions, SBA examined the percentages of 504 lending that were for these two types of debt refinancing. The chart below shows these percentages for five August-July cohorts.

	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
Dollar Volume of 504 Debt Refi with Expansion as Percentage of Dollar Volume of Total 504 Loans	3.79%	5.54%	4.56%	4.83%	4.61%
Dollar Volume of 504 Debt Refi without Expansion as Percentage of Dollar Volume of Total 504 Loans	3.12%	5.30%	7.59%	11.43%	6.53%

As indicated in the chart, the percentages of 504 debt refinancing loans with and without expansion are in the recent period returning to the levels seen prior to the publication of the interim final rule in July 2021. For debt refinancing without expansion, the August 2020-July 2021 period was elevated and the August 2021-July 2022 cohort was an outlier, but the next 12 months settled to a percentage that at a level consistent with the periods before the interim final rule and not indicative of a significant impact. These two cohorts with higher percentages were during the pandemic and were covered, at least in part, by Section 1112 Payments. The 12-month percentages of 504 debt refinancing with expansion did not vary widely.

The interim final rule increased the amounts on 504 debt refinancing with and without expansion. Aggregate 504 lending over the period in question ranged from approximately \$5 billion to almost \$9.25 billion, with total 504 lending in the latest 12-month cohort at about \$6.6 billion. Even in the unlikely scenario of the interim final rule as the sole cause of an increase in total 504 lending from the low volume in the examined period of \$5 billion (in 2018-19) to the latest 12-month total of \$6.6 billion, the incremental impact, as indicated by changes in the percentage of total lending accounted for by each, is under \$100 million.

### Congressional Review Act

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), 5 U.S.C. 804(2). Per the above cost benefit analysis, the annual effect on the economy is less than \$100 million.

### Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

### Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive order. As such it does not warrant the preparation of a Federalism Assessment.

### Paperwork Reduction Act

In order to implement the Act, SBA determined that it was necessary to modify SBA Form 1244, *Application for Section 504 Loans*, which is currently approved under OMB Control Number 3245-0071, to conform the form to the revised requirements for debt refinancing loans. The changes did not add any new burdens for the respondents, rather, in some instances, the revisions will result in reduced burden as applicants and CDCs no longer have to submit certain information.

(a) The information collection previously required PCLP CDCs to process all applications for debt refinancing without expansion through the Sacramento Loan

Processing Center (SLPC) and not through the PCLP CDC's delegated authority. As discussed above, this requirement was removed by the Economic Aid Act and, accordingly, SBA removed the requirement from the information collection when the interim final rule (IFR) was released in 2021. The final rule would result in no further changes. This revision did not change the information the PCLP CDC is required to collect, only how the application is processed. In addition, consistent with the changes made by the IFR, SBA added two questions to clarify that, for debt refinancing without expansion, PCLP CDCs must process applications through the SLPC when the application involves the refinancing of same institution debt or, in cases involving the refinancing of federally-guaranteed debt, the CDC is requesting an exception to the requirement that the new installment payment be at least 10% less than the existing installment amount. No further changes are necessary.

(b) With respect to the question regarding whether the Applicant creates or retains the required number of jobs per debenture amount, an option has been added for the Applicant to indicate whether the project is eligible under the 504 debt refinance alternate job standard reinstated by the Economic Aid Act.

(c) Of the exhibits that are required, Exhibit 20 required that if the debt had been refinanced within two years of the date of application, non-PCLP CDCs had to submit with the application (and PCLP CDCs had to retain in the loan file) copies of the current debt and lien instruments as well as copies of the debt and lien instruments for the debt that was replaced by the current debt. With the minimum age of the qualified debt shortened from two years to six months by the Economic Aid Act, SBA revised the form to remove the requirement that these debt and lien instruments be included as part of Exhibit 20.

In addition to the changes resulting from this rule, SBA made the following technical corrections and clarifying changes to Form 1244: (1) SBA corrected the

description of which exhibits the CDC must retain and which the CDC must submit with the loan application; (2) SBA added a separate entry to facilitate disclosure of the use of refinancing proceeds involving land purchases only (the previous format of “Land/Building” did not clearly indicate how information is to be reported); and (3) under the list of economic development objectives met by the project, SBA added references to “base closures” and “minority-owned business”.

Regulatory Flexibility Act, 5 U.S.C. 601-612

When an agency issues a rulemaking, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires the agency to “prepare and make available for public comment an initial regulatory analysis” which will “describe the impact of the proposed rule on small entities.” Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The changes in the final rule are a codification of new legislation and will involve changes to regulations at 13 CFR 120.882, however there will be no changes to SBA Form 1244, and the burden hours to the small business concern and the Certified Development Company will remain the same. There are no anticipated additional compliance costs. Furthermore, SBA does not anticipate that any changes to the Eligible Project costs for 504 loans regulations would have a significant impact to a substantial number of small businesses. This is because only a small percentage of each year’s 504 loans involve debt refinancing without expansion. Each loan represents a unique small business borrower because these borrowers are only eligible to refinance their debt once in a fiscal year with the 504 Loan Program, and therefore do not have multiple 504 debt refinancing without expansion loans in any given year. Based on the average number of 504 loans from FY 2021-2023, only 13% involved debt refinancing without expansion. Specifically, in FY 2021, out of 9,676 loans, 693 loans or 7% were for debt refinancing

without expansion. In FY 2022, this figure was 829 out of 9,254 or 9% 504 loans, while in FY 2023, 1,005 out of 4,451 or 23% of 504 loans were for debt refinancing without expansion. While the percentage of the 504 loan portfolio involving debt refinancing without expansion increased by 20% from FY 2021 to 2023, this increase was due in part to the Section 1112 Payments, and in part to a rapidly increasing interest rate environment. The Section 1112 Payments have sunset and SBA anticipates some adjustment due to the continued interest rate increases planned by the Federal Reserve. Because Section 1112 Payments have sunset, SBA believes that the 504 debt refinancing without expansion volume will return to the pre-section 1112 level of less than 10% of small entities. As such, SBA concludes that the rule will not impact a substantial number of small entities.

While the economic implications of the final rule are small and the data do not reveal a significant economic impact on a substantial number of small entities, SBA anticipates a refinancing growth rate more in alignment with pre-pandemic levels, with some adjustment to the economic impact because the final rule will expand program eligibility. SBA analyzed potential growth scenarios of up to 30% growth in the 504 loan program, and even using this impact model (actual growth has never exceeded 15% in any prior fiscal year) the total of 504 debt refinance without expansion projects as a percentage of either number of loans or dollar volume of loans is not estimated to exceed 16% of the overall portfolio. When this percentage is applied to the estimated number of loans (small businesses impacted), this would result in less than 1,100 small businesses impacted. SBA estimates that the average monthly savings for small businesses that refinance their existing loans through the 504 loan program would be between \$7,000 to \$8,300 per month, with a total estimated savings over the life of the loan of between \$180,000 to \$205,000. SBA determined this estimate based on the historical average of a 504 debt refinancing without expansion loan averaging \$1,000,000 for each small

business applicant. SBA used the 504 July 2023 interest rates to calculate both the monthly and total loan savings to each small business concern. The lower end of the \$180,000 to \$205,000 range reflects the economic impact if a small business concern refinanced for 20 years, while the higher end reflects the economic impact of a small business concern refinanced for 25 years. Small business concerns do not use 10 year 504 loans for debt refinancing without expansion, as their goal is to lower their payments by not only taking advantage of the 504 loan program's fixed interest rate, but also the longer 20 and 25-year loan terms available.

For the reasons stated above, SBA certifies that this action would not have a significant economic impact on a substantial number of small entities.

#### **List of Subjects in 13 CFR Part 120**

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, the interim rule amending 13 CFR part 120, which was published at 86 FR 40775 on July 29, 2021, is adopted as final with the following changes:

#### **PART 120--BUSINESS LOANS**

1. The authority citation for part 120 is revised to read as follows:

**Authority:** 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3) and (7), and 697(a) and (e); sec. 521, Pub. L. 114-113, 129 Stat. 2242; sec. 328(a), Pub. L. 116-260, 134 Stat. 1182.

2. Amend § 120.882 as follows:

a. Revise paragraphs (g)(3) and (15); and

b. In paragraph (g)(16), in paragraph (B) of the definition of *Qualified debt*, remove “85%”, “120.131 and 120.870(b)”, and “120.131(b)” and add in their places “75%”, “§§ 120.131 and 120.870(b)”, and “§ 120.131(b)”, respectively.

The revisions read as follows:

#### **§ 120.882 Eligible Project costs for 504 loans.**

\* \* \* \* \*

(g) \* \* \*

(3) A loan that is subject to a guarantee by a Federal agency or department may be refinanced under the following conditions and requirements:

(i) An existing 504 loan may be refinanced if both the Third Party Loan and the 504 Loan are being refinanced or the Third Party Loan has been paid in full. If the 504 Loan being refinanced received approval through another CDC, the CDC working on the current refinancing must provide advance notice to the other CDC in writing (by email or letter).

(ii) An existing 7(a) loan may be refinanced if the CDC notifies the 7(a) lender in advance in writing (by email or letter).

(iii) The refinancing will provide a substantial benefit to the borrower. For purposes of this paragraph (g)(3)(iii), “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 (including subsidy recoupment fees), financing fees, and other financing costs must be added to the amount being refinanced in calculating the percentage reduction in the new installment payment, but the portion of the new installment amount attributable to Eligible Business Expenses (as described in paragraph (g)(6)(ii) of this section) is not included in this calculation. Exceptions to the 10 percent 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 the exception in this paragraph (g)(3)(iii).

\* \* \* \* \*

(15) Notwithstanding § 120.860, a debt may be refinanced under this paragraph (g) if it does not meet the job creation or other economic development objectives set forth

in § 120.861 or § 120.862. In such case, the 504 loan may not exceed the product obtained by multiplying the number of employees of the Borrower by \$90,000. The number of employees of the Borrower is equal to the sum of:

(i) The number of full-time employees of the Borrower on the date of the application; and

(ii) The product obtained by multiplying:

(A) The number of part-time employees of the Borrower on the date of the application; by

(B) The quotient obtained by dividing the average number of hours each part-time employee of the Borrower works each week by 40.

*Example 1 to paragraph (g)(15):* 30 full-time employees and 35 part-time employees working 20 hours per week is calculated as follows:  $30 + (35 \times (20/40)) = 47.5$ . The maximum amount of the 504 loan would be 47.5 multiplied by \$90,000, or \$4,275,000.

\* \* \* \* \*

3. Amend § 120.883 by revising paragraph (e) to read as follows:

**§ 120.883 Eligible administrative costs for 504 loans.**

\*\*\*\*\*

(e) CDC Closing Fee (see § 120.971(a)(2)) up to a maximum of \$10,000; and

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**Isabella Casillas Guzman,**

*Administrator.*

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