



## **SMALL BUSINESS ADMINISTRATION**

### **13 CFR Part 120**

### **RIN 3245-AI15**

### **504 Debt Refinancing**

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

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Small Business Administration (SBA or Agency) is amending regulations governing SBA’s 504 Loan Program for debt refinancing with expansion and debt refinancing without expansion with this direct final rule. The changes will streamline the loan application process, expand eligibility criteria for small businesses borrowers, and make minor corrections. The amendments include: removing the 50% cap on debt refinance without expansion to conform with current legislation; raising the loan to value requirement on debt refinancing without expansion projects that include other business expenses to 90% and eliminating the cap on Eligible Business Expenses; aligning the “substantially all” standard for 504 debt refinancing with expansion so it is consistent with the debt refinancing without expansion standard of 75%; eliminating the 10% substantial benefit test on 504 debt refinancing with expansion and 504 debt refinancing without expansion on refinancing other government debt; and allowing certain “other secured debt” to be included as an Eligible Business Expense.

**DATES:** The direct final rule is effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. SBA must receive comments on this direct final rule on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by RIN 3245-A115, through the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the information via e-mail to [Gregorius.Suryadi@sba.gov](mailto:Gregorius.Suryadi@sba.gov). Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Gregorius Suryadi, Senior Financial and Loan Specialist, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416; telephone: (202) 205-6806; email: [gregorius.suryadi@sba.gov](mailto:gregorius.suryadi@sba.gov).

## **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 100 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).

On July 29, 2021, SBA published in the **Federal Register** an interim final rule implementing 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, which revised the conditions and requirements for refinancing 504 loan debt (“Debt Refinancing in the 504 Loan Program interim final rule” or “interim final rule”). 86 FR 40775 (July 29, 2021). SBA subsequently issued a final rule on October 12, 2023, finalizing the interim final rule and implementation of section 328 of the Economic Aid Act (“Debt Refinancing in the 504 Loan Program final rule” or “final rule”). 88 FR 70580 (October 12, 2023).

With the prior rulemaking the Agency included statutorily required mandatory changes to the 504 loan program, with one omission, as the statutory change limiting the loan dollar volume of 504 refinancing loans without expansion to 50% of the CDC’s prior portfolio, as required by section 328(a)(2)(A) of the Economic Aid Act, was not included. In addition, during the prior rulemaking the National Association of Development Companies (NADCO), a 504 Loan Program trade association, along with many of its member CDCs, requested additional changes to the 504 loan program. Since these changes went beyond those mandated by the Economic Aid Act, they were not implemented at the time since the Agency’s objective was to implement the statutory changes directly and expeditiously without variation. Some of the changes

recommended by the trade association required careful consideration by each impacted SBA office, had the potential for risk shifting in the 504 portfolio, had a potential impact on other SBA programs such as the 7(a) program, or had a potential for impact on the 504 subsidy rate and consequently were held for future rule making. The comments were nonetheless consistent with lender round table feedback from three major lender conferences.

Commenters, requested that SBA: increase eligibility for 504 debt refinance with expansion and 504 debt refinance without expansion; update the eligibility standards for more flexibility; remove requirements that are not required by statute and which create an additional barrier to debt restructuring and relief for 504 small business borrowers; raise the loan to value requirement on debt refinancing without expansion projects; align the “substantially all” standard for 504 debt refinancing with expansion with the 504 debt refinancing without expansion standard; and eliminate the 10% substantial benefit test on 504 debt refinancing with expansion and 504 debt refinancing without expansion on refinancing other government debt.

Congress’ long-established policy is that SBA stimulate and supplement the flow of long-term loan funds which small business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, including with the refinancing of existing loan debt. 15 U.S.C. 661. Businesses are facing increasing operating costs due to inflation, global supply chain challenges, and increases in building costs and supplies which are above pre-pandemic levels. The impact of multiple Federal Reserve interest rate increases<sup>1</sup> from March 2022 to February 2024 has prompted a request for expedient SBA action on behalf of small business borrowers. The 504 loan program has a long-term fixed interest rate for 40% of the project to help small businesses refinance conventional loans or government based programs,

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<sup>1</sup> Since March 2022, the Federal Reserve has increased its benchmark short-term interest rate from near zero to a 23-year high of 5.25% to 5.5% to tame inflation. The Federal Reserve raised rates on March 17, 2022, by 25 basis points, on May 5, 2022, by 50 basis points, in July, July, September, and November each time by 75 basis point with each reset, then on December 14, 2022, by 50 basis points, in February, March, May and July 2023 by 25 basis points with each reset.

which are generally based on a variable rate. This results in significant cost savings for the small business borrower and assists small businesses with managing costs by providing a predictable expense with a fixed interest rate.

Further, as the interim final rule was released July 29, 2021, and as the final rule was released October 12, 2023, SBA could not have anticipated the impact on policy of the Federal Reserve interest rate policy during the prior rulemaking. Since the publication of the Debt Refinancing in the 504 Loan Program final rule, SBA's Office of Financial Assistance (OFA) has received input on the impact of the rising interest rate environment on 504 debt refinancing. For example, SBA received feedback on the difficulty of SBA applicants in meeting the 10% substantial benefit test to borrowers, and CDCs have asked for a revision of this standard as it was not required in statute and was adopted through regulations.

As described in the section-by-section analysis below, SBA is issuing this direct final rule to correct the omission described above and to implement changes to 504 debt refinancing in response to public comments provided during the prior rulemaking and industry input both before and following the prior rulemaking.

## **II. Justification for Direct Final Rule**

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act. 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, when an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. SBA is publishing this rule as a direct final rule because public participation is unnecessary. SBA views this as a non-controversial administrative action because all technical corrections and updates are consistent with public comments received throughout the previous rulemaking process. This rule will be effective on the date shown in the **DATES**

section unless SBA receives significant adverse comment on or before the deadline for comments. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. SBA does not expect to receive any significant adverse comments because these technical corrections and updates are consistent with broad stakeholder comments received during the prior previous rulemaking process. Further, because some of the changes in this rule are prescribed by statute, SBA does not expect significant adverse comments.

If SBA receives significant adverse comment, SBA will publish a document in the **Federal Register** withdrawing this rule before the effective date. If SBA receives no significant adverse comments, the rule will be effective 45 days after publication without further notice.

### **III. Section-by-Section Analysis**

A. Delete 13 CFR 120.882(g)(10) to Remove the 50% Cap for Debt Refinancing Without Expansion in Alignment with the Economic Aid Act.

Subsequent to the publication of the Debt Refinancing in the 504 Loan Program final rule SBA identified a drafting omission that must be corrected to ensure the corresponding regulation aligns with the Economic Aid Act. Section 328(a) of the Economic Aid Act had repealed section 521(a) of title V of division E of the Consolidated Appropriations Act of 2016. Section 521(a), in part, limited a CDC's financings so that in any fiscal year no more than 50 percent of the CDC's financings were for debt refinancing not involving expansion, a requirement implemented by SBA regulations at 13 CFR 120.882(g)(10). Consequently, the Debt Refinancing in the 504 Loan Program final rule should have deleted the regulation at 13 CFR 120.882(g)(10).

SBA has included in this direct final rule the correction and is removing 50% cap for debt refinancing without expansion to align with the Economic Aid Act, thereby removing the current inconsistency between Agency regulations and the statute. This change will provide certainty to CDCs that their debt refinancing loans are no longer capped at 50% of the total

dollar amount of the CDC's 504 loans approved, thereby increasing debt refinancing opportunities for small business concerns.

**B. Update 13 CFR 120.882(g)(6) to Increase the Percentage of Qualified Debt in Projects Including Eligible Business Expenses from 85% to 90% and Remove the 20% Cap on Eligible Businesses Expenses.**

Currently, if an application for a 504 debt refinancing without expansion project includes a request to finance Eligible Business Expenses (as described in 13 CFR 120.882(g)(6)(ii)), the portion of the refinancing project provided by the 504 loan and the third party loan may be no more than 85% of the fair market value of the fixed assets that will serve as collateral and the Borrower may receive no more than 20% of the fair market value of the eligible fixed assets securing the debt to be refinanced for Eligible Business Expenses. SBA is removing these restrictions in regulation in order to expand eligibility for more small businesses to access debt refinancing under the 504 loan program. SBA will review comments received in response to this direct final rule and will consider further policy changes are needed.

**C. Adding Consistency to the Standard for “Substantially All” between Refinancing without Expansion and Refinancing with Expansion**

Under current regulations, one of the conditions of a 504 debt refinancing with expansion project is that substantially all (85% or more) of the proceeds of the indebtedness were used to acquire land, including a building situated on that land, to construct a building on that land, or to purchase equipment. The previous 504 debt refinancing rulemaking modified the 504 debt refinancing without expansion “substantially all” standard in the Qualified Debt definition by lowering the threshold from 85% to 75%. The effect was that this lowered standard only applied to 504 debt refinancing without expansion because the term “Qualified Debt” is only used in the context of 504 debt refinancing without expansion and not 504 debt refinancing with expansion.

SBA received input from NADCO and during lender round tables that this inconsistency

of 75% for 504 debt refinancing without expansion and 85% for 504 debt refinancing with expansion is confusing and that it would be helpful to have a consistent standard between the debt refinancing with expansion and debt refinancing without expansion options for CDCs, third party lenders, and small businesses seeking 504 loan program assistance. Based on public comments received, SBA is making the “substantially all” standard consistent between the two programs by revising § 120.882(e)(1) to lower the “substantially all” standard from 85% to 75% for 504 debt refinancing with expansion. SBA will review comments received in response to this direct final rule and will consider further policy changes are needed to further expand the standard.

#### D. Allowing Other Secured Debt to be Included as an Eligible Business Expense.

Under current regulations, a debt refinancing without expansion project may include a request to finance eligible business expenses, which are limited to the operating expenses of the business. Debt is generally not included as an eligible business expense, except for certain types of unsecured debt. On occasion SBA Applicants have debt that has been secured by the same Eligible Fixed Assets securing the qualified debt that is the subject of the 504 debt refinancing project (“Other Secured Debt”). Under current regulations Other Secured Debt may not be part of the 504 debt refinancing project. As a result, the borrower, even with 504 financing, may be subject to debt and liens that are not in the best risk portfolio interest of the Agency. Including Other Secured Debt as an Eligible Business Expense is in alignment with 504 loan program goals, and the flexibility to include Other Secured Debt would further assist the small business in restructuring its outstanding debt. Even so, SBA will not consider Other Secured Debt that was incurred for capital expenditures as an Eligible Business Expense because such expenditures are not the day-to-day expenses of a business and SBA does not believe Congress intended that such expenditures be included as an Eligible Business Expense. Further, while a secured business line of credit may be an Eligible Business Expense, such Other Secured Debt will only be eligible as



part of a 504 debt refinance without expansion financing provided any existing liens are subordinated to the 504 loan.

E. Revising 13 CFR 120.882(e)(5) and (g)(3)(iii) the Substantial Benefit Test for Government Guaranteed Debt for 504 Refinancing with and without Expansion to remove the 10% Standard.

Under current regulations at 13 CFR 120.882(e)(5) and (g)(3)(iii), 504 debt refinancing must provide a “substantial benefit” to the borrower. For purposes of 504 debt refinancing a “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. In its public comments for the prior rulemaking, NADCO noted that because of the high interest rate environment and the large number of interest rate increases in recent year, the 10% substantial benefit test is overly burdensome for the 504 small business borrower. NADCO requested that SBA remove this test to provide the small business borrower the maximum opportunity to respond to market conditions.

SBA’s concerns about portfolio risk for both the 504 and 7(a) programs led SBA to adopt the 10% substantial benefit test for the 504 loan program to provide parity with the 7(a) program’s 10% substantial benefit test. There are substantial differences, however, between the programs that would obviate the necessity to anchor the 504 loan program to the 7(a) loan program’s 10% substantial benefit test. For example, SBA’s motivation for adopting a 10% substantial benefit test in 7(a) stemmed from the concern with using limited 7(a) program authority for refinancing, especially for other 7(a) loans already considered to be on reasonable terms, and the concern over the risk of considerable 7(a) secondary market distortions. Meanwhile, the 504 Loan Program has ample authority for debt refinancing and adding restrictions on 504 refinancing at the same level of 7(a) refinancing restrictions would be overly burdensome on the 504 small business borrower. The result is that many small businesses are prevented from refinancing into a more favorable longer term fixed-rate product and must remain with their variable rate loan in a rising rate environment.

SBA is therefore revising 13 CFR 120.882(e)(5) and (g)(3)(iii) to remove the 10% substantial benefit test for both debt refinancing with expansion and debt refinancing without expansion, while maintaining the requirement that the 504 small business borrowers must have documented benefit in the restructuring of debt.

**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 Order 12866**

The Office of Management and Budget (OMB) has determined that this rule does not constitutes a “significant regulatory action” for purposes of Executive Orders 12866. This direct final rule implements specific statutory provisions in section 328(a)(2)(A) and implements additional changes to debt refinancing in SBA’s 504 loan program.

As shown in Tables 1A and 1B below, during the five-year period spanning fiscal year (FY) 2018 and FY 2024 (year-to-date (YTD) through May), a total of 47,252 504 loans were approved for a total gross approval amount as of May 31, 2024, of \$43,003,577,000. In addition, during the past six fiscal years, SBA approved an average of 235 debt refinance with expansion loans per year with an average annual dollar volume of \$305,542,333 and approved an average of 441 debt refinance without expansion loans per year with an average annual dollar volume of \$470,209,333. In 2020, the Economic Aid Act increased the amount of existing indebtedness eligible for a debt refinance with expansion project from 50 percent of the project cost to 100 percent of the project cost which appears to have impacted loan size. The tables are arranged in order to convey the data while staying within the margin parameters of the **Federal Register** notice guidelines and are an update to the data provided in the 504 Debt Refinancing final rule published October 12, 2023. As this direct final rule, in part, is intended to correct drafting errors and provide eligibility clarifications in the prior final rule, SBA has updated data on

through May 31, 2024, and included data reported through September 30, 2023 (last full fiscal year), in the final rule.

**Table 1A – 504 Refinancing Lending Activity from 2018 to 2021**

*Note: Table 1B on next page contains 2022 through YTD FY 24*

504 Cohort	2018	2019	2020	2021
Total Number of 504 Loans	5,874	6,099	7,119	9,676
Total Dollar Volume of 504 Loans Approved	\$4,753,644,000	\$4,958,552,000	\$5,826,885,000	\$8,218,105,540
Number of 504 Debt Refinancing with Expansion	181	181	236	301
Dollar Volume of 504 Debt Refinancing with Expansion	\$212,098,000	\$192,968,000	\$296,392,000	\$389,801,000
Number of 504 Debt Refinancing Without Expansion	181	166	386	693
Dollar Volume of 504 Debt Refinancing Without Expansion	\$154,062,000	\$154,842,000	\$370,160,000	\$709,020,000

**Table 1B – 504 Refinancing Lending Activity from 2022 to YTD 2024 (May 31st)**

504 Cohort	2022	2023	FY 2024 YTD (as of May)	Totals FY 2019- YTD FY24 (May)
Total Number of 504 Loans	9,254	5,924	3,306	47,252
Total Dollar Volume of 504 Loans Approved	\$9,207,996,290	\$6,419,378,000	\$3,619,017,000	\$43,003,577,000
Number of 504 Debt Refinancing with Expansion	336	176	96	1,507
Dollar Volume of 504 Debt Refinancing with Expansion	\$454,568,000	\$287,427,000	\$156,938,000	\$1,990,192,000
Number of 504 Debt Refinancing Without Expansion	829	392	286	2,933

Dollar Volume of 504 Debt Refinancing Without Expansion	\$959,897,000	\$473,275,000	\$333,791,000	\$3,155,047,000
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Prior to the change increasing the amount of existing indebtedness eligible for a debt refinance with expansion project from 50 percent of the project cost to 100 percent of the project cost, 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, there have been 4,312 refinancing 504 loans approved of which 1,507 were debt refinancing with expansion and 2,933 were debt refinancing without expansion. In dollars approved, this is a combined amount of 504 refinancing loans totaling \$5,145,239,000 of which \$1,990,192,000 was for refinancing with expansion and \$3,155,047,000 was for refinancing without expansion.

**Table 2A – 504 Loan Activity by Cohort Years August to July 2018 to July 2021**

*Note: Table 2B below contains July 2021 through YTD FY 24*

Cohorts	Aug'18-Jul'19	Aug'19-Jul'20	Aug'20-Jul'21
Total Number of 504 Loans	6,153	6,836	9,572
Total Dollar Volume of 504 Loans Approved	\$5,063,078,000	\$5,575,249,000	\$7,934,192,540
Number of 504 Debt Refi With Expansion	183	243	295
Dollar Volume of 504 Debt Refi With Expansion	\$191,786,000	\$309,027,000	\$362,039,000
Number of 504 Debt Refi Without Expansion	160	302	66
Dollar Volume of 504 Debt Refi Without Expansion	\$157,880,000	\$295,396,000	\$601,831,000

**Table 2B – 504 Loan Activity by Cohort Years August to July 2021 to YTD 2024 (May)<sup>1</sup>**

Cohorts	Aug'21-Jul'22	Aug'22-Jul'23	Aug'23-May 24
Total Number of 504 Loans	9,392	6,253	4,312

<b>Cohorts</b>	<b>Aug'21-Jul'22</b>	<b>Aug'22-Jul'23</b>	<b>Aug'23-May 24</b>
Total Dollar Volume of 504 Loans Approved	\$9,248,887,290	\$6,624,952,000	\$4,745,370,000
Number of 504 Debt Refi With Expansion	332	183	135
Dollar Volume of 504 Debt Refi With Expansion	\$446,975,000	\$305,619,000	\$207,621,000
Number of 504 Debt Refi Without Expansion	934	388	383
Dollar Volume of 504 Debt Refi Without Expansion	\$1,057,386,000	\$432,638,000	\$475,326,000

<sup>1</sup>As shown in Tables 2A and 2B, 504 Loan Activity by Cohort Years August to July 2018 to YTD 2024 (Feb), Data as of 9/15/2023, total dollar volume is lifetime gross approval amount including increases.

This direct final rule is necessary to implement the Economic Aid Act in full and provide economic relief to small businesses still adversely impacted by COVID-19. SBA anticipates that making 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 expansion and debt refinance without expansion) between August 2018 and May 2024. 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 February 2024. See Tables 2A and 2B.

As an appropriate baseline for evaluation of the impacts of the direct 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 payments made on behalf of

	2018-19	2019-20	2020-21	2021-22	2022-23
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%

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 the 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 by fiscal year comparisons may not be appropriate for assessment of impact. The current direct final rule is a drafting correction update for the previous final rule with the estimates of activity updated accordingly. The chart below also provided in the current rulemaking below shows these percentages for five August-July cohorts prior to the final rule published October 12, 2023. It is still current as the July 2024 data is not yet available.

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 was at a level consistent with the periods before the interim final rule and not indicative of a significant impact. These two cohorts with higher 504 debt refinancing percentages occurred 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 prior rulemaking was 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.

#### Executive Order 13563

Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), requires agencies to adopt regulations through a process that involves public participation, and to the extent feasible, base regulations on the open exchange of information and perspectives from affected stakeholders and the public as a whole. SBA has developed this rule in a manner consistent with these requirements, and the public will have the opportunity to provide comments following the publication of this rule.

#### 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.

#### Executive Order 13175

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Congressional Review Act (5 U.S.C. 801-808)

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This rulemaking has been reviewed and determined not to meet the criteria set forth in 5 U.S.C. 804(2).

#### Paperwork Reduction Act

In order to implement the Economic Aid 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) SBA will need to revise Form 1244 page 9 to add “Other Secured Debt” as a line item in the sources and uses document.

(b) SBA will need to revise Form 1244 Exhibit instructions in standard operating procedure (SOP) 50 10 7.1 to require a 75% substantial benefit for refinancing with expansion to match the last form change for refinancing with expansion. This revision did not change the



information the CDC is required to collect, only the form instructions. No further changes are necessary.

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.” The RFA requires such analysis only where notice and comment rulemaking are required. As discussed above, SBA has found good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, SBA is not required to conduct a regulatory flexibility analysis and is publishing this rule as a direct final rule without advance notice and public comment. Further, 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. SBA is nonetheless providing the following abbreviated analysis.

The changes in this direct final rule would, in part, be a drafting correction to 13 CFR 120.882. While there will be minor 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 the additional 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 FY2021, 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 section 1112 payments, and in part to a rapidly increasing interest rate environment. 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 direct 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. In its final rule issued October 12, 2023, 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. As this is a direct final rule update to correct drafting issues with the previous final rule, the data provided at that time is still relevant. 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 \$202,000 to \$227,000. 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 June 2024 interest rates to calculate both the monthly and total loan savings to each

small business concern. The lower end of the \$202,000 to \$227.0000 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.

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

Business loan programs, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

### **PART 120—BUSINESS LOANS**

1. The authority citation for 13 CFR part 120 continues 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 by:

- a. Revising paragraphs (e)(1) and (5), (g)(3)(iii), and (g)(6);
- b. Removing and reserving paragraph (g)(10); and
- c. In paragraph (g)(16), adding the definitions of “Eligible Business Expenses,” “Operating Expenses,” and “Other Secured Debt” in alphabetical order.

The revisions and additions read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(1) Substantially all (75% or more) of the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment. The assets acquired must be eligible for financing under the 504 loan program. If the acquisition, construction, or purchase of the asset was originally financed through a commercial loan that would have satisfied the “substantially all” requirement and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy this paragraph (e)(1).

\* \* \* \* \*

(5) The financing will provide a substantial benefit to the borrower when prepayment penalties, financing fees, and other financing costs are accounted for. For purposes of this paragraph (e)(5), *substantial benefit* means that the portion of the new installment amount attributable to the debt being refinanced must be less than the existing installment amount(s). Prepayment penalties, financing fees, and other financing costs must also be added to the amount being refinanced in calculating the percentage reduction in the new installment payment. Exceptions to the 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 this exception.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(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 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)(16) of this section) is not included in this calculation. Exceptions to the reduction requirement may be approved by the 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).

\* \* \* \* \*

(6)(i) The portion of the Refinancing Project provided by the 504 loan and the Third Party Loan may be no more than 90% of the fair market value of the fixed assets that will serve as collateral.

(ii) The Borrower's application may include a request to finance Eligible Business Expenses as part of the Refinancing Project 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. The Borrower's application must include a specific description of the Eligible Business Expenses for which the financing is requested and an itemization of the amount of each expense. Any debt for Operating Expenses of the business that was incurred with a credit card or a business line of credit may be included if the credit card or business line of credit is issued in the name of the small business and the Applicant certifies that the debt being refinanced was incurred exclusively for business related purposes. Loan proceeds must not be used to refinance any personal expenses. Both the CDC and the Borrower must certify in the application that the funds will be used to cover Eligible Business Expenses. Borrower must, upon request, substantiate the use of the funds provided for business expenses through, for example, bank statements, invoices marked "paid," cleared checks, or any other documents that demonstrate that a business obligation was satisfied with the funds provided.

\* \* \* \* \*

(16) \* \* \*

*Eligible Business Expenses* are payments of the business for either Operating Expenses or Other Secured Debt.

\* \* \* \* \*

*Operating Expenses* are expenses of the business that were incurred but not paid prior to the date of the 504 application or that will become due for payment within 18 months after the date of application. Examples include salaries, rent, utilities, inventory, and other expenses of the business that are not capital expenditures.

*Other Secured Debt* is debt incurred prior to the 504 loan application that has been secured by the same Eligible Fixed Assets securing the qualified debt and incurred for the benefit of the Borrower and/or Operating Company. Other Secured Debt does not include debt incurred for the purposes of capital expenditures, and any existing liens must be released or subordinated to the amount of the debt being refinanced by the 504 loan.

\* \* \* \* \*

**Isabella Casillas Guzman,**  
*Administrator.*

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