

(b) Projects in foreign countries (loans financing real or personal property located outside the United States or its possessions).

§ 120.882 Eligible Project costs for 504 loans.

Eligible Project costs which may be paid with the proceeds of 504 loans are:

(a) Costs directly attributable to the Project including expenditures incurred by the Borrower (with its own funds or from a loan):

(1) To acquire land used in the Project prior to applying to SBA for the 504 loan; or

(2) For any other expense toward a Project within nine months prior to receipt by SBA of a complete loan application, unless the time limit is extended or waived by SBA for good cause;

(b) In Projects involving construction, a contingency reserve for cost overruns not to exceed 10 percent of construction cost;

(c) Professional fees directly attributable and essential to the Project, such as title insurance, opinion of title, architectural and engineering costs, appraisals, environmental studies, and legal fees related to zoning, permits, or platting; and

(d) Repayment of interim financing including points, fees and interest.

(e) If the project involves expansion of a small business concern, 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 expansion cost if:

(1) Substantially all (85% 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).

(2) The existing indebtedness is collateralized by fixed assets. The 504 eligible fixed assets collateralizing any debt to be refinanced or relating to the portion of debt being refinanced in the case of a partial refinance must also collateralize the 504 Loan unless SBA approves a waiver due to extraordinary circumstances. PCLP CDCs may not use their delegated authority to approve a loan requiring this waiver;

(3) The existing indebtedness was incurred for the benefit of the small business concern for which any new Project costs are incurred. Existing 7(a) and 504 loans may be refinanced under this section in accordance with SBA policies or procedures;

(4) The financing will be used only for refinancing existing indebtedness or costs relating to the project financed;

(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, "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, 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 10% 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 this exception;

(6) The borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing. For purposes of this section, "date of refinancing" refers to the date the 504 loan is approved by SBA. Any unremedied delinquency after approval must be reported to SBA as an adverse change;

(7) The financing under section 504 will provide better terms or rate of interest than the existing indebtedness on the date of refinancing. For purposes of this paragraph, "better terms or rate of interest" may include longer

maturity (but always commensurate with the assets' useful life), a lower interest rate committed on the Third Party Lender Loan or projected on the 504 loan, improved collateral conditions, or less restrictive loan covenants.

(8) The authority to approve the refinancing of same institution debt must be approved by SBA and is not delegated to the PCLP CDCs. For the purposes of this paragraph, "same institution debt" means any debt of the CDC or the Third Party Lender financing the new project, or of affiliates of either.

(f) For the purposes of paragraph (e), the phrase "project involves expansion of a small business concern" includes any project that involves the acquisition, construction or improvement of land, building or equipment for use by the small business concern.

(g) For applications received on or after February 17, 2011 and approved by SBA no later than September 27, 2012, SBA may approve a Refinancing Project of a qualified debt subject to the following conditions and requirements:

(1) The Refinancing Project does not involve the expansion of a small business;

(2) The applicant for the refinancing available under this paragraph (g) has been in operation for all of the 2 year period ending on the date of application;

(3) The qualified debt will mature on or before December 31, 2012, unless such date is extended by SBA, based on its assessment of available resources and market conditions, in a Notice published in the FEDERAL REGISTER. Based on available resources and market conditions, SBA may allow other debt to be refinanced if the refinancing would provide a substantial benefit to the Borrower in accordance with § 120.882(e)(5). If SBA determines to allow such refinancing based on the substantial benefit criteria, SBA will publish a Notice in the FEDERAL REGISTER of this determination;

(4) In addition to the annual guarantee fee assessed under § 120.971(d)(2), Borrower must pay SBA a supplemental annual guarantee fee to cover the additional cost attributable to the

refinancing in an amount established by SBA each fiscal year.

(5) The funding for the Refinancing Project must come from three sources based on the current fair market value of the fixed assets serving as collateral for the Refinancing Project, including a Third Party Loan that is at least as much as the 504 loan, not less than 10% from the Borrower (excluding administrative costs), and not more than 40% from the 504 loan. In addition to a cash contribution, the Borrower's 10% contribution may be satisfied as set forth in § 120.910 or by the equity in any other fixed assets that are acceptable to SBA as collateral for the Refinancing Project, provided that there is an independent appraisal of the fair market value of the asset;

(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 business expenses for which the financing is requested and an itemization of the amount of each expense. For the purposes of this paragraph (b), "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 application or that will become due for payment within eighteen months after the date of application. 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.

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(7) If the qualified debt is not fully satisfied by the funding provided by the Refinancing Project, the lender of the qualified debt must take one of the following actions, or some combination thereof, to address the deficiency:

(i) Forgiveness of all or part of the deficiency;

(ii) Acceptance of payment by the Borrower, or

(iii) Acceptance of a Note executed by the Borrower for the balance, or any portion of the balance. Such Note must be subordinate to the 504 loan if the Note and the 504 loan are secured by any of the same collateral. The Note is subject to any other restrictions that SBA may establish to protect its creditor position, including standby requirements;

(8) The Third Party Lender must have a first lien position, and the 504 loan must have a second lien position, on all Eligible Fixed Assets securing the Refinancing Project. Any other lien must be junior in priority to these lien positions. For other fixed assets serving as collateral for the Refinancing Project, the lien positions of the Third Party Lender and the 504 loan may be junior to any existing liens acceptable to SBA;

(9) Eligible Project costs which may be paid with the proceeds of the 504 loan are the amount used to refinance the qualified debt and other costs under § 120.882(c) and (d) and eligible administrative costs under § 120.883;

(10) 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 \$65,000. The number of employees of the Borrower is equal to the sum of:

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

(ii) The product obtained by multiplying:

(A) The number of part-time employees of the Borrower on the date of 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: 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 \$65,000, or \$3,087,500.

(11) The authority to approve the refinancing under this paragraph (g) is not delegated to PCLP CDCs;

(12) The 504 loans approved under this paragraph (g) must be disbursed within 6 months after loan approval. The Director, Office of Financial Assistance, or his or her designee may approve any request for extension of the disbursement period for good cause;

(13) The Third Party Loan may not be sold on the secondary market as a part of a pool guaranteed under subpart J of this part 120 when the debt being refinanced is same institution debt;

(14) The Third Party Lender must certify that it would not refinance the qualified debt except for the assistance provided under this paragraph (g);

(15) *Definitions.* For the purposes of this paragraph (g), the terms below are defined as follows:

Date of application refers to the date the 504 loan application is received by SBA.

Eligible Fixed Assets are one or more long-term fixed assets, such as land, buildings, machinery, and equipment, acquired, constructed or improved by a small business for use in its business operations.

Fair market value refers to the current appraised value of an asset that is established by an independent appraiser in accordance with the standards established by SBA in its SOPs.

Qualified debt is a commercial loan:

(i) That was incurred not less than 2 years before the date of the application for the refinancing available under this paragraph (g);

(ii) That is not subject to a guarantee by a Federal agency or department;

(iii) Substantially all (85% or more) of which was for an Eligible Fixed Asset. If the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the "substantially all" standard (the

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“original loan”) 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 (iii). 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 deemed to satisfy these policies, provided that Borrower demonstrates compliance with 13 CFR 120.131(b) for existing buildings as of the date of application.

(iv) That was for the benefit of the small business concern;

(v) That is collateralized by Eligible Fixed Assets;

(vi) That is not a Third Party Loan that is part of an existing 504 Project; and

(vii) For which the applicant for the refinancing available under this paragraph (g) has been current on all payments due for not less than one year preceding the date of application. For the purposes of this paragraph (vii), “current on all payments due” means that no payment was more than 30 days past due from either the original payment terms or modified payment terms (including deferments) if such modification was agreed to in writing by the Borrower and the lender of the existing debt prior to the October 12, 2011. Any delinquency in payment on the loan to be refinanced after approval and before debenture funding must be reported to SBA as an adverse change.

Refinancing Project means the fair market value of the Eligible Fixed Asset(s) securing the qualified debt and any other fixed assets acceptable to SBA.

Same institution debt means any debt of the Third Party Lender that is providing funds for the refinancing, or of its affiliates.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57987, Oct. 7, 2003; 74 FR 29591, June 23, 2009; 76 FR 9218, Feb. 17, 2011; 76 FR 63155, Oct. 12, 2011]

§ 120.883 Eligible administrative costs for 504 loans.

The following administrative costs are not part of Project costs, but may be paid with the proceeds of the 504 loan and the Debenture (see § 120.971):

(a) SBA guarantee fee;

(b) Funding fee (to cover the cost of a public issuance of securities and the Trustee);

(c) CDC processing fee;

(d) Borrower’s out-of-pocket costs associated with 504 loan and Debenture closing other than legal fees (for example, certifications and the copying costs associated with them, overnight delivery, postage, and messenger services) but not to include fees and costs described in § 120.882;

(e) CDC Closing Fee (see § 120.971(a)(2)) up to a maximum of \$2,500; and

(f) Underwriters’ fee.

[64 FR 2118, Jan. 13, 1999, as amended at 68 FR 57987, Oct. 7, 2003]

§ 120.884 Ineligible costs for 504 loans.

Costs not directly attributable and necessary for the Project may not be paid with proceeds of the 504 loan. These include, but are not limited to, the following:

(a) Debt refinancing (other than interim financing), except as provided in § 120.882(e) and (g).

(b) A CDC may not use 504 loan proceeds to pay any creditor in a position to sustain a loss causing a shift to SBA of all or part of a potential loss from an existing debt.

(c) Third-Party Loan fees (commitment, broker, finders, origination, processing fees of permanent financing).

(d) Ancillary business expenses, such as:

(1) Working capital;

(2) Counseling or management services fees;

(3) Incorporation/organization costs;

(4) Franchise fees; and

(5) Advertising.

(e) Fixed-asset Project components, such as:

(1) Short-term equipment, furniture, and furnishings (unless essential to and a minor portion of the Project);

(2) Automobiles, trucks, and airplanes; and