SBA SOP 50 10 5(J): Debt Refinance

E. Permissible Debt Refinance without Expansion (13 CFR § 120.882(g)):
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SBA may approve a Refinancing Project of a Qualified Debt that does not involve an expansion as follows:

1. A Refinancing Project that does not involve an expansion may be financed only in a fiscal year in which the subsidy cost to the Federal government on making guarantees under the 504 Debt Refinancing Program and under the 504 Loan Program is zero.

2. Each CDC's new financings under this paragraph IV.E during any fiscal year cannot exceed 50% of the dollars the CDC loaned under the 504 Loan Program during the previous fiscal year. SBA may waive this limitation for good cause. SBA will consider the following factors in determining whether there is good cause for the Borrower to obtain the refinancing through the CDC that exceeds the 50% requirement:

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

3. Eligibility and Other Requirements:

a) The Applicant must have been in operation for all of the two year period ending on the date of application, as evidenced by the financial statements submitted at the time of application. If the ownership of the Applicant has changed during this two year period, the CDC must follow the New Business guidance found in Subpart C, Chapter 1 of this SOP, to determine whether the Applicant is considered a New Business and document the justification for its determination in its credit memorandum.

b) The Refinancing Project must include Qualified Debt, as defined below. In addition, the Refinancing Project may include Eligible Business Expenses, as defined below. In addition, the amount of the Refinancing Project is subject to the Loan-to-Value Limitations described below.

c) “Qualified Debt” means a commercial loan:

i. Substantially all (85% or more) of the proceeds of which were used to acquire an Eligible Fixed Asset (as defined in 13 CFR § 120.882(g)(15)). If the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the “substantially all” standard (the “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 requirement;

ii. That was incurred not less than two (2) years prior to the date of application;

iii. That was for the benefit of the small business seeking the refinancing;

iv. That has been secured by the Eligible Fixed Asset for at least two (2) years;

v. For which the Borrower has been “current on all payments due” for not less than one year preceding the date of application. “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 not less than one year prior to the “date of application”;

vi. That is not subject to a guarantee by a Federal agency or department; and

vii. That is not a Third Party Loan which is part of an existing 504 Project.

d) “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.

e) “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. (Additional fixed assets may be added only when needed to comply with the 90% Loan-to-Value Limitation described in paragraph E.4 below).

f) The Qualified Debt may consist of a combination of two or more loans, provided that each of the loans satisfies the Qualified Debt requirements.

g) "Eligible Business Expenses" are limited to the operating expenses of the business that were incurred but not paid prior to the date of application or that will become due for payment within 18 months after the date of application. These expenses may include salaries, rent, utilities, inventory, and other operating expenses of the business. Debt is not included as an Eligible Business Expense, except credit card debt may be included if the credit card is issued in the name of the small business and the Applicant certifies that the credit card debt being refinanced was incurred exclusively for business related purposes. If the business credit card was also used for personal reasons, the Applicant must identify which purchases were for personal reasons and that amount must be deducted from the credit card balance. Loan proceeds must not be used to refinance any personal expenses.
h) If the Borrower is requesting that the refinancing include Eligible Business Expenses, the application must include a specific description of the Eligible Business Expenses and an itemization of the amount of each expense, with the Form 1244 certification of the accuracy of this information.

i) When the fixed asset serving as collateral for the Refinancing Project is a Limited or Special Purpose Property, the Borrower must comply with the contribution requirements set forth in Chapter 1, Paragraph IV.C.4 of this Subpart.

4. Loan-to-Value Limitations.

   a) For projects that refinance only Qualified Debt, the maximum loan to value of the Refinancing Project allowed is 90%.

   b) For projects when the amount of Qualified Debt being refinanced is more than 90 percent of the value of the Eligible Fixed Asset(s) securing the Qualified Debt, the Borrower must provide additional cash or other fixed asset collateral acceptable to SBA so as not to exceed a 90% loan to value of the Refinancing Project.

   c) For any projects that include the financing of Eligible Business Expenses, a maximum 85% loan to value of the Refinancing Project will apply and the Eligible Business Expenses portion of the Project may not exceed 20% of the value of the Eligible Fixed Asset(s) securing the Qualified Debt. (Additional fixed assets may not be added if any Eligible Business Expenses are being financed.)

5. Fees.

a) In addition to the annual guarantee fee assessed under 13 CFR § 120.971(d)(2), Borrower must pay SBA a supplemental annual guarantee fee to cover any additional cost attributable to the refinancing in an amount established by SBA each fiscal year. The CDC should follow the instructions on the Authorization for Debenture Guaranty to ensure the fee is correct.

b) SBA will review the fee annually to determine whether it needs to be changed and, if so, will issue a notice of any change.

6. Other Implementation Guidelines.

a) Borrower must meet all current 504 Loan Program occupancy requirements at time of application.

b) Loan applications for assistance under this paragraph IV.E must be processed by SBA and may not be approved by CDCs under PCLP authority.

7. Documentation Requirements.

a) Credit memorandum. The CDC must provide an analysis in its credit memorandum that the proposed debt refinancing satisfies each of the requirements of this debt refinancing program.

b) Form 1244. At application, the Borrower and CDC must certify that the debt is eligible (Exhibit 2 of SBA Form 1244) and the Third Party Lender must certify in its commitment letter that it has no reason to believe that the debt is not eligible (Exhibit 17 of SBA Form 1244), as instructed in SBA Form 1244 Part D.

c) Transcripts. The CDC must submit a transcript of the previous 12-month payment history on the Qualified Debt being refinanced which confirms that the Borrower is “current on all payments due” for not less than one year preceding the date of application (Exhibit 21 of SBA Form 1244).

d) Appraisal. Appraisals are not required at time of application. Appraisals dated within 12 months of the date the application was approved are required prior to closing, and appraisals must otherwise comply with the requirements for appraisals set forth in this SOP.

e) Documentation to Verify Lien(s) at Application. In considering the Borrower's application, the CDC must obtain evidence that lien(s) are securing the Qualified Debt with Eligible Fixed Asset(s), and state in its credit memorandum that it has verified that the lien(s) has been in place for at least 2 years prior to the date of application. The CDC must retain the evidence of the liens in its records (e.g., Preliminary Title Report, Mortgage Deed of Trust, or UCC-1 filing).

f) Interim Lender Documentation. The Interim Lender must execute SBA Form 2288R, Interim Lender Certification for Refinancing Program, similar to what is required in all 504 closings.

8. Same Institution Debt.

a) When the loan being refinanced is Same Institution Debt (as defined in 13 CFR § 120.882(g)(15)), the Third Party Lender may modify its existing loan documents (Note, Deed of Trust/Mortgage, etc.) instead of requiring the Borrower to execute and record new loan documents for the Third Party Loan.

b) All modified loan documents must meet SBA's regulatory requirements for a Third Party Loan (see 13 CFR §§ 120.920 and 120.921).
c) When the loan being refinanced is Same Institution Debt, either an Interim Loan or an escrow account may be used, and:

i. The Third Party Lender (who, in this case, is also the Lender of the debt being refinanced) must execute SBA Form 2416, Lender Certification for Refinanced Loan.
ii. The CDC may create an escrow account ("account") at the time of closing of the 504 loan for the purpose of holding the Borrower's cash contribution, if any, and the net debenture proceeds.
iii. The account will be established in accordance with an Escrow Agreement, which must be executed by the Borrower, the Third Party Lender, the Escrow Agent and the

CDC. The account may be held by the CDC attorney, Title Company or other party approved by SBA District Counsel.

iv. The Borrower's cash contribution, if any, must be deposited into the account at the time of closing of the 504 loan.

v. A copy of the Escrow Agreement must be provided to the SBA's District Counsel with evidence of funding by Borrower's cash contribution, if any, at the time of closing of the 504 loan.

vi. The net debenture proceeds must be wired to the account, and all funds may be released only upon written approval by the CDC and SBA, provided that CDC/SBA have the required lien positions on the collateral as set forth in the Authorization and Debenture Guaranty.

vii. The debt to be refinanced will be satisfied by payment of the escrowed funds to the Third Party Lender.

Ocean State Business Development Authority
www.osbda.com
(401)-454-4560
155 South Main Street, #403 Providence, RI 02903