



SMALL BUSINESS JOBS ACT:

504 LOAN PROGRAM DEBT REFINANCING



Jobs Act – 504 Debt Refinance Program

- On September 27, 2010, the Small Business Jobs Act of 2010, P.L. 111-240 (Jobs Act) was signed into law.
- The Jobs Act temporarily extends the 504 program to allow refinance without business expansion.
- SBA has \$15 billion in program authority for this commercial real estate and equipment refinance program. However, the amount of owner-occupied commercial real estate that has lost significant value is many times this amount.
- All loans must be approved by September 27, 2012.



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- In order to first help those small businesses most in need of assistance and facing potential foreclosure, SBA is opening up this temporary program first to small businesses that have a mortgage coming due for renewal on or before December 31, 2012.
- Once SBA has satisfied the immediate demand for this most needy class of small businesses, it will open the program to other small businesses that have balloon notes and ultimately to small businesses that would realize a substantial cash flow benefit as a result of the program.
- In this way, SBA will maximize the impact of this program on saving small businesses, retaining and creating jobs and helping to stabilize commercial real estate values.
- SBA is reviewing how best to enact the cash out provision of the Act and is soliciting public comment.



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- All loans must be funded by the sale of the debenture within six (6) months of approval. Loans will be cancelled by SBA if not funded during this period.
- CDC must report any delinquency to SBA after loan approval but before loan funding as an adverse change.
- There will be an ongoing guarantee fee of 1.043% on the total unpaid balance of the debenture. This fee will be reviewed at the close of the first year.



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Training Topics

- Eligibility – Projects and Borrowers
- Eligible Use of Proceeds Certifications
- Borrower's Contribution
- Same Institution Debt
- Lien Positions
- Appraisal Requirements
- Restrictions
- Documenting Job Retention
- Jobs Act 504 Debt Refinance Project Examples
- Q & A



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ELIGIBILITY



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Eligible Project Costs

504 loan proceeds are to be used to refinance the Qualified Debt and other eligible costs permitted for 504 loans under 13 CFR § 120.882 (c) and (d) and 120.883 (see Job Documentation Addendum).

Loan Structure & Conditions

Funding for the Refinancing Project must come from three (3) sources:

- 1.) Third Party Lender - *not less than 50%*
- 2.) SBA 504 Loan - *not more than 40%*
- 3.) Borrower - *not less than 10%*



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ELIGIBILITY (cont.)

- For debt refinancing only, not for expansion or the purchase of real estate or other fixed assets.
- Substantially all (85% or more) of the proceeds of the loan being refinanced must have been used for 504 eligible purposes. All of the proceeds must have been used for the benefit of the small business concern.
- Loans being refinanced must be maturing on or before December 31, 2012.
- At a later date, SBA may allow other balloons, as well as loans that can demonstrate strong needs in other ways.



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ELIGIBILITY (cont.)

- Loans being refinanced must have been current for the past year with no payment being deferred or past due for more than 30 days. Transcript must be provided to demonstrate compliance with this requirement.
- Debt must have been incurred not less than two (2) years prior to the date the application is received by SBA.
- Small business concern must have been in business for two years prior to the submission of the application.



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Eligibility (cont.) - Alternative Job Retention Goals

Debt may be refinanced even if it does not meet the job creation or other economic development objectives set forth in 13 CFR § 120.861 or § 120.862.

“Improving, diversifying or stabilizing the economy of the locality.” 13 CFR § 120.862(a)(1)

In such case, the 504 loan size may not exceed the product obtained by multiplying the number of full-time equivalent employees (40 hour work week) of the Borrower by \$65,000.



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Eligibility (cont.)

Amount of Third Party Loan and 504 Loan

The Third Party loan and the 504 loan combined may not be more than 90% of the fair market value of the fixed assets securing the loan.

In no event may it exceed the outstanding principal balance of the debt being refinanced.



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Eligibility (cont.)

If the amount of the refinance is not sufficient to repay the entire outstanding debt, the CDC must disclose how the balance of the debt will be handled, as noted below.

The lender of the Qualified Debt may:

- a) forgive all or part of the deficiency (which may have tax consequences for the Borrower)
- b) accept payment from the Borrower for all or part of the deficiency,
- c) accept a new Note for the balance which will be subordinate to the liens of the Third Party Lender and SBA. Such notes will contain at least a three-year stand-by requirement.



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ELIGIBLE USE OF PROCEEDS CERTIFICATION



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Eligible Use of Proceeds Certification

- The Borrower must certify that the debt meets the eligible use of proceeds standard and the Third Party Lender must also certify that it has no reason to believe that the debt does not meet this standard.
- Third Party Lender must certify that it would not make the loan without SBA's participation.
- To comply with the requirements with respect to no refinancing where the creditor is in a position to sustain a loss causing a shift to the SBA, the Third Party Lender and the CDC must certify that they have no knowledge of a default by the Borrower nor knowledge or information that would point to the likelihood of a default.
- SLPC will conduct a random sampling and contact the CDC if additional information is needed to support the certifications.



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BORROWER'S CONTRIBUTION



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Borrower's Contribution

In addition to a cash contribution, the Borrower's 10% contribution may be satisfied by its equity in the Eligible Fixed Asset(s) serving as collateral for the Refinancing Project or by the equity in any other fixed assets that are acceptable to SBA as collateral.

An independent appraisal of the fair market value of the project assets and any additional assets offered as additional collateral must be provided.



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SAME INSTITUTION DEBT



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Same Institution Debt

- For same institution debt the transcript of account for the entire period of the loan must be provided. This will be used to determine overall creditworthiness of the Borrower.
This is to prevent 12-month rehabilitation of otherwise poor credits from qualifying.
- The Third Party Lender must set forth in its commitment letter that it will not make the loan without SBA's participation.
- The Third Party Lender must certify to the CDC and SBA that the TPL has no knowledge of a default by the Borrower and has no knowledge or information that indicates the likelihood of a default.
- When the debt being refinanced is same institution debt, the Third Party Loan cannot be sold on the secondary market as part of a pool of guaranteed loans as per 13 CFR 120, Subpart J.



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Lien Positions



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Lien Positions

Liens positions on the Eligible Fixed Assets securing the Refinancing Project must be first and second for the Third Party Lender and SBA, respectively. Any other lien must be junior in priority to these lien positions.

When other fixed assets are offered as collateral, the SBA and Third Party Lender liens may be junior to any previously existing liens on that collateral. Such collateral may include commercial and residential real estate and/or machinery and equipment where fair market value can be determined by an independent appraisal.



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APPRAISAL REQUIREMENTS



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Appraisal Requirements

- An independent appraisal must be submitted by the CDC supporting the fair market value of the fixed assets being refinanced and any other assets being offered as collateral whether commercial or residential. This appraisal must be dated within six (6) months of the date of application.
- The qualifications of the appraiser and requirements of the report are outlined in SOP 50-10-5.



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RESTRICTIONS



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Restrictions

- No refinancing of loans with an existing federal guaranty. (e.g. a 7(a) loan or USDA loan)
- No refinancing of debt if it is to an Associate of the Borrower or a SBIC or New Market Ventures Capital Companies (NMVCC).



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Restrictions (cont.)

- No refinancing of loans which is already part of an existing 504 project.
- No Jobs Act 504 Debt Refinance program loans may be processed under PCLP authority. All loans must go to SLPC for approval.
- No refinancing where the creditor on the debt to be refinanced is in a position to sustain a loss causing a shift to SBA or all or a portion of a potential loss from an existing debt.



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JOBS ACT 504 DEBT REFINANCE PROJECT EXAMPLES



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EXAMPLES

The following examples illustrate potential loan structures for over-collateralized and under-collateralized refinancing projects :

Example 1) over-collateralized

Example 2) slightly over-collateralized

Example 3) under-collateralized

Example 4) under-collateralized (*with additional collateral that increases project size*)

In each example, the fair market value of the Eligible Fixed Assets securing the refinancing is based on an independent appraisal as noted in the example.



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Example 1 – Over-collateralized

Appraised Value of Property	\$600,000
Outstanding Balance of Debt	\$500,000

The value of the collateral securing the project exceeds the outstanding principal balance of the debt. Lien is less than 90% of the appraised value.

	<u>Project</u>
Third Party Loan	\$ 300,000 (50% of appraised value)
SBA 504 Loan	200,000 (balance of existing lien – 33.3% in example)
Borrower's Contribution	<u>100,000</u> (all equity in project – 16.7% in example)
Total Project	\$ 600,000 (100%)



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Example 2 – Slightly over-collateralized

Appraised Value of Property	\$540,000
Outstanding Balance of Debt	\$500,000

The value of the collateral securing the project is greater than the outstanding principal balance of the debt. Lien is slightly greater than 90% of the appraised value. No additional assets are being injected into the project.

	<u>Project</u>
Third Party Loan	\$ 270,000 (50% of appraised value)
SBA 504 Loan	216,000 (40% of appraised value)
Borrower's Contribution	<u>54,000</u> (10% of appraised value: \$40,000 equity and \$14,000 cash from the borrower)
Total Project	\$ 540,000 (100%)



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Example 3 – Under-collateralized

Appraised Value of Property	\$600,000
Outstanding Balance of Debt	\$800,000

The value of the collateral securing the project is less than the outstanding principal balance of the debt. Existing lien exceeds the appraised value. No additional assets are being injected into the project.

	<u>Project</u>
Third Party Loan	\$ 300,000 (50% of appraised value)
SBA 504 Loan	240,000 (40% of appraised value)
Borrower's Contribution	<u>60,000</u> (10% of appraised value)
Total Project	\$ 600,000 (100%)



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Example 4 – Under-collateralized

Appraised Value of Property	\$ 600,000 (project property)
Appraised Value of all Eligible Fixed Assets	\$ 900,000 (\$600,000 project property + \$300,000 additional Eligible Fixed Assets from Borrower)
Outstanding Balance of Debt	\$ 800,000

The value of the collateral securing the project is less than the outstanding principal balance of the debt. Additional assets are pledged which increase the project size. Existing lien exceeds the appraised value. Borrower has additional Eligible Fixed Assets with Equity of \$300,000 that will be included in the project.

	<u>Project</u>
Third Party Loan	\$ 450,000 (50% of appraised value of all eligible fixed assets)
SBA 504 Loan	350,000 (38.9% in this example, to pay off existing lien)
Borrower's Contribution	<u>\$100,000</u> (11.1% in this example, all equity in project)
Total Project	\$ 900,000 (100%)



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QUESTIONS & ANSWERS



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ADDENDUM – DOCUMENTING JOB RETENTION



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Documenting Job Retention (cont.)

Dollar per Job Ratio Calculation:

30 full-time employees and 35 part-time employees working 20 hours per week is calculated as follows:

$$30 + (35 \times (20/40)) = 47.5$$
$$(20/40 = .5; 35 \times .5 = 17.5; 30 + 17.5 = 47.5)$$

The maximum amount available for the 504 loan:

$$\$65,000 \times 47.5 = \$3,087,500$$



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Documenting Job Retention (cont.)

When applying the alternative job retention standard, the number of employees is equal to:

- a) the number of full-time employees on the date of application, plus
- b) The product obtained by multiplying:
 - i. the number of part-time employees on the date of application, by
 - ii. The quotient obtained by dividing the average number of hours each part-time employee works each week by 40