

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

RIN 3245-AG17

#### Small Business Jobs Act: 504 Loan Program Debt Refinancing

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule implements section 1122 of the Small Business Jobs Act of 2010 (Jobs Act), which authorizes projects approved for financing under Title V of the Small Business Investment Act to include the refinancing of qualified debt. This interim final rule revises the existing 504 Loan Program rules to make them consistent with section 1122 of the Jobs Act.

**DATES:** *Effective Date:* This rule is effective February 17, 2011.

*Comment Date:* Comments must be received on or before May 18, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 3245-AG17, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* Andrew B. McConnell Jr., Small Business Administration, Office of Financial Assistance, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

*Hand Delivery/Courier:* Andrew B. McConnell Jr., Small Business Administration, Office of Financial Assistance, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>.

If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Andrew B. McConnell, Jr., 409 Third Street, SW., Washington,

DC 20416, or send an e-mail to [jobsact504refi@sba.gov](mailto:jobsact504refi@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:**

Andrew B. McConnell, Jr. at [Andrew.McConnell@sba.gov](mailto:Andrew.McConnell@sba.gov) or 202-205-7238.

**SUPPLEMENTARY INFORMATION:**

**I. Background Information**

The 504 Loan Program is a long-term financing tool for economic development that provides small businesses with long-term, fixed-rate financing to help acquire major fixed assets for expansion or modernization. A Certified Development Company (CDC) is typically a private, nonprofit corporation set up to contribute to the economic development of its community. CDCs work with SBA and private sector lenders to provide financing to small businesses under the 504 Loan Program. In general, 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 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.

The Small Business Jobs Act of 2010 (Jobs Act), Public Law 111-240, 124 Stat. 2504, enacted on September 27, 2010, temporarily expands the ability of a small business to use the 504 Loan Program to refinance certain qualifying existing debt. The expanded authority is available for two years only. Prior to the Jobs Act, in a typical 504 project with a refinancing component, the borrower was required to use a significant portion of the loan proceeds for expansion of the business. See 13 CFR 120.882(e). The temporary Jobs Act program authorizes the use of the 504 Loan Program for the refinancing of debt where there is no expansion of the small business concern.

SBA is aware that there is a substantial amount of small business commercial first mortgage debt that was incurred 3-5 years ago that is maturing, typically through balloon mortgages,

and in need of refinancing. In addition, credit availability for small businesses has decreased during the recent economic turmoil, and there may not be sufficient conventional lending capacity to handle this wave of refinancing. Further, real estate values have declined significantly in many parts of the country in recent years, which will make it more difficult for small businesses to refinance their maturing mortgages in the conventional market. By helping small businesses refinance current mortgages and lock in lower, long-term interest rates, this temporary Jobs Act program will help to provide the assistance needed by small businesses to avoid liquidation or foreclosure and improve their prospects for survival. It will also help to stabilize the commercial real estate market, as well as encourage lenders to increase lending by improving the health of their portfolios.

SBA has determined that this refinancing program will initially apply only to loans maturing on or before December 31, 2012 in order to assist those small businesses most in need with the limited resources available. SBA will publish a Notice in the **Federal Register** extending this date based on SBA's assessment of any change in available resources and market conditions. In addition, SBA will monitor the use of the program capacity of SBA and the CDC industry to handle the demand for this program and market conditions to determine whether SBA should also allow a debt to be refinanced if it is not maturing within the set timeframe but the refinancing would provide a "substantial benefit" to the Borrower. If SBA determines to allow such refinancing based on the "substantial benefit" criteria, SBA will announce such determination through a Notice published in the **Federal Register**, and will apply 13 CFR 120.882(e)(5) in implementing it.

The interim final rule also includes a provision requiring the Borrower to pay a supplemental annual guarantee fee, in addition to the existing annual guarantee fee, to cover the additional cost attributable to the refinancing program under the Jobs Act. SBA has determined that the total annual guarantee fee assessed for loans approved for refinancing during Fiscal Year 2011 will be 1.043% annually on

the unpaid principal balance of the debenture. If necessary, SBA will publish, at least sixty days before the beginning of the new Fiscal Year, a Notice in the **Federal Register** of any change in the fee for loans approved during Fiscal Year 2012. This fee will be assessed and collected in the same manner as the current annual SBA guarantee fee under 13 CFR 120.971(d)(2).

SBA has also determined that the loan structure for the Refinancing Project will be the same as in the 504 program generally, with the Third Party Lender contributing at least 50% of the fair market value of the fixed assets serving as collateral for the refinancing, the 504 loan contributing no more than 40% of such fair market value, and the Borrower contributing at least 10% of such fair market value. Consistent with current regulations, SBA will only require a 10% injection by the Borrower when the fixed asset serving as collateral is a limited or special purpose building because the higher contribution amounts (15% or 20% injection) apply only when these types of buildings are being acquired, constructed, expanded or converted. See 13 CFR 120.910(a)(2). In this case, the sole purpose of the loan is refinancing existing debt and, thus, no further contribution will be required of the Borrower.

SBA will permit the equity, if any, in the Eligible Fixed Asset securing the loan being refinanced to be counted toward the Borrower's 10% contribution, provided it is supported by the independent appraisal of the fair market value of that asset. In addition, if the fair market value of the Eligible Fixed Asset exceeds the existing debt but the Borrower does not have 10% equity in the asset, SBA will permit the equity in any other fixed assets that are acceptable to SBA to serve as collateral for the Refinancing Project and to be counted toward the Borrower's 10% contribution, provided that there is an independent appraisal of the fair market value of the additional asset(s). As discussed in the previous paragraph, the Third Party Loan and the 504 loan will not exceed 90% of the fair market value of all of the fixed assets serving as collateral for the Refinancing Project.

In the event that the outstanding principal balance on the existing loan is more than 90% of the current fair market value of the Eligible Fixed Assets securing the loan being refinanced, SBA will also permit the Borrower to contribute the equity in other fixed assets acceptable to SBA as collateral to increase the amount of the Refinancing Project, provided that there

is an independent appraisal of the fair market value of the additional asset(s). Again, the Third Party Loan and the 504 loan will not exceed 90% of the fair market value of all of the fixed assets serving as collateral for the Refinancing Project.

In addition, the Jobs Act defines "qualified debt" to mean indebtedness "the proceeds of which were used to acquire an eligible fixed asset". SBA believes that it is consistent with this definition to allow a debt to be refinanced where substantially all of the proceeds of that debt were used to acquire an eligible fixed asset. By "substantially all", SBA means "almost all" or "nearly all" of the proceeds, and a Borrower will satisfy this standard where it used at least 85% of the proceeds of the existing debt to acquire an Eligible Fixed Asset. The remaining 15% of the proceeds must also have been incurred for the benefit of the small business. In implementing these requirements, SBA will require the Borrower to certify that the existing debt satisfies these requirements, and will require the Third Party Lender to certify that it has no reason to believe that the existing debt does not satisfy these requirements. In addition, SBA may require, on a random basis, for a borrower and/or lender to submit additional documentation supporting the substantially all assertion. SBA is also amending 13 CFR 120.882(e)(1) to incorporate this criteria, and to make the existing debt refinancing program involving expansions consistent with this new debt refinancing program.

The Jobs Act also authorizes the Agency to provide financing under this debt refinancing program "to be used solely for the payment of business expenses." The statute requires that the application for the financing of business expenses include a specific description of the expenses for which the additional financing is requested and an itemization of the amount of each expense. The statute expressly prohibits the borrower from using any part of the financing under this clause for non-business purposes. SBA will need time to implement this provision for the financing of business expenses. New controls will need to be developed to ensure that these funds are used in accordance with the statute, without requiring a burdensome level of detailed justification of expenditures. As the procedures for this portion of the legislation will be new to the CDCs and require the development of additional procedures for SBA staff, SBA is requesting input from interested parties regarding the level of detail that SBA should require to meet the statutory

mandate that all proceeds be used for business purposes. The aim is a balance between excessive controls and ensuring that a business owner does not knowingly or unknowingly use the loan proceeds for personal purposes. With the immediate need for refinancing, the Agency is proceeding with this interim final rule to implement the refinancing component while continuing to consider the most efficient and effective manner in which to implement the business expense component of this new program. The Agency invites comments from interested parties on how best to and whether to implement this provision.

In addition, the Jobs Act includes a provision that states that "if the appraised value of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125 percent of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency". The Agency is continuing to review the scope of this provision and how it should be implemented, and invites comments from interested parties on this provision.

Further, SBA has determined that, with the limited resources available for this refinancing program, it will not at this time refinance Third Party Loans that are already part of an existing 504 Project. These Third Party Lenders have already benefitted from having access to subordinated debt provided by the Federal government, and also have other tools to assist borrowers that are experiencing financial difficulties, such as deferments in loan payments and workout plans. SBA will continue to consider the option of allowing the refinancing of existing Third Party Loans, and invites comments from interested parties on this issue.

This debt refinancing program is available for the refinancing of same institution debt which, similar to the definition for debt refinancing involving expansions in 13 CFR 120.882(e)(8), is defined as any debt of the CDC or the Third Party Lender that are providing funds for the refinancing, or the debt of affiliates of either. To protect the program from incurring unnecessary losses in the refinancing of same institution debt, and in accordance with 13 CFR 120.884(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. SBA will require the CDC and the Third Party Lender to make certifications with respect to this standard for same institution debt. Whether there is a shift

to SBA of a potential loss should be determined by assessing the potential loss to SBA associated with the Refinancing Project (e.g., the business is experiencing a significant threat to its viability or existence although the business is current on its outstanding debt). In addition, SBA will require a refinancing involving same institution debt to supply a full transcript of the loan payment history instead of only one year. The Jobs Act also provides that this refinancing program is not available to any loan that is subject to a guarantee by a Federal agency, which includes 7(a) loans. SBA also reminds lenders and CDCs that the refinancing of the existing debt must meet the "credit elsewhere" criteria currently applicable to the 504 Program. See 13 CFR 120.101. SBA will require the Third Party Lender to certify that it would not refinance the qualified debt without the assistance made available under this rule. In addition, to avoid a conflict of interest, or the appearance of a conflict of interest, in connection with the refinancing of debts owed to investment companies, SBA is amending 13 CFR 120.130(b) to prohibit the use of loan proceeds for the refinancing of a debt owed to a New Markets Venture Capital Company.

Finally, the authority provided by the Jobs Act is available for loan applications received by SBA on or after the effective date of this rulemaking and approved by SBA through September 27, 2012.

## II. Section-by-Section Analysis

*Section 120.130(b).* To avoid conflicts of interest, or the appearance of conflicts of interest, in connection with the refinancing of debts owed to investment companies, SBA is amending this provision to prohibit the use of loan proceeds for the refinancing of a debt owed to a New Markets Venture Capital Company.

*Section 120.882(e)(1).* SBA is amending this provision to make the existing debt refinancing program involving expansions consistent with the new paragraph (g). As amended, this provision will allow debt refinancing involving expansions where substantially all (85% or more) of the proceeds of the indebtedness had been used to acquire Eligible Fixed Assets, and the remaining 15% of the proceeds had been incurred for the benefit of the small business concern.

*Section 120.882(g).* Under current regulations, SBA may only provide refinancing under the 504 Loan Program when the refinancing is provided in conjunction with an expansion by the small business. The Jobs Act

temporarily authorizes refinancing without an expansion. SBA is adding a new paragraph (g) to § 120.882 to implement this new authority for refinancing existing eligible debt under the 504 loan program. This new paragraph sets forth the terms and conditions under which non-expansion refinancing will be permitted in the 504 program. For example, it:

(1) Provides that the financing provided by the Third Party Loan and the 504 loan may be no more than 90% of the fair market value of the fixed assets that will serve as collateral for the Refinancing Project, as established by an independent appraisal, but in no event may exceed the outstanding principal balance of the qualified debt;

(2) Provides that the Borrower pays an annual guarantee fee to cover the full cost attributable to the refinancing program. SBA has determined that the amount of this guarantee fee for loans approved during Fiscal Year 2011 is 1.043% annually on the unpaid principal balance of the debenture. If SBA determines that the fee must be changed to cover the costs for loans approved during Fiscal Year 2012, SBA will publish a Notice of the change in the **Federal Register**;

(3) Incorporates the definition of "qualified debt" set forth in the Jobs Act and includes several new defined terms, including "Refinancing Project";

(4) Incorporates the alternate job retention goal set forth in the Jobs Act for Borrowers that do not meet the job creation and retention goals under §§ 501(d) and (e) of the Small Business Investment Act. Under this alternate job retention goal, the Agency may provide a 504 loan in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$65,000. An example of how this alternate job retention goal is calculated is included in the rule;

(5) Provides that, in accordance with the Jobs Act, the authority to approve the refinancing is not delegated to the PCLP CDCs;

(6) Provides that refinancing will be initially available only for those loans that mature on or before December 31, 2012, unless SBA publishes a Notice in the **Federal Register** to extend the timeframe. In addition, depending on the program capacity of SBA and the CDC industry to handle the demand for this program and market conditions, SBA may in the future also permit a debt to be refinanced if it would provide a substantial benefit to the Borrower, as defined and in accordance with 13 CFR 120.882(e)(5). In such case, SBA will publish a Notice of this change in the **Federal Register**;

(7) Provides that the loan must be disbursed within 6 months after loan approval, unless the Director for Financial Assistance or his designee determines, upon request, that a longer disbursement period is appropriate for good cause. SBA expects disbursement extensions to be rare, and includes this time limitation on disbursements to ensure that funds not used in a timely manner may be made available to other small businesses during this limited two-year program;

(8) Provides that, consistent with 504 Loan Program requirements, 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 not less than 50% from the Third Party Lender, not less than 10% from the Borrower, and not more than 40% from the 504 loan;

(9) Prohibits same institution debt refinanced under this program from being sold in the secondary market as part of a pool guaranteed under subpart J of part 120 of 13 CFR; and

(10) Identifies eligible project costs which may be paid with the proceeds of the refinancing.

*Section 120.884.* SBA amends § 120.884(a) to include this new authority as an additional exception to the general prohibition against using proceeds of the 504 loan for debt refinancing.

## III. Justification for Publication as Interim Final Rule

In general, before issuing a final rule, SBA publishes the rule for public comment in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides an exception to this standard rulemaking process where the agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(c)(3)(B). The good cause requirement is satisfied when prior public participation can be shown to be impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. The current turmoil in the financial markets is having a negative impact on the availability of financing for small businesses. SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need to help small businesses

sustain and survive during this economic downturn and the short-term nature of this new authority. This new refinancing authority will offer a significant opportunity for businesses, allowing them to restructure existing debt into new 504 financings that will help secure the financial stability of their businesses which will, in turn, help them to survive and save jobs. It also has the potential to quickly free up critical capital for small business owners across the country, allowing them to continue to operate and potentially expand and add jobs. This new authority is only available until September 27, 2012 and would have less impact if delayed until notice and comment rulemaking could be completed. Advance solicitation of comments for this rulemaking would be contrary to the public interest because it would harm those small businesses that need immediate access to capital. However, SBA did hold a public forum in Boston, Massachusetts on November 17, 2010, in which more than 120 persons participated in person or by phone offering their suggestions on how the Agency should implement section 1122 of the Jobs Act.

Although this rule is being published as an interim final rule, comments are solicited from interested members of the public. These comments must be submitted on or before the deadline for comments stated in this rule. The SBA will consider these comments and the need for making any amendments as a result of these comments.

#### IV. Justification for Immediate Effective Date

The APA requires that “publication or service of a substantive rule shall be made not less than 30 days before its effective date, except \* \* \* as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. As this rule is implementing new authority that expands the 504 Program’s current authority to refinance debt and does not restrict current behavior, there is no need for the public to adjust its behavior before the rule takes effect. Furthermore, any delay in the effective date would deny small businesses immediate access to credit, and an immediate effective date will maximize the rule’s value to small businesses and its effect on the economy. SBA therefore finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between

publication and effective date. Compliance With Executive Orders 12866, 12988, and 13132, the 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 has determined that this rule constitutes a “significant regulatory action” under Executive Order 12866 thus requiring Regulatory Impact Analysis as set forth below.

#### A. Regulatory Objective of the Interim Final Rule

The objective of the debt refinance program authorized by the Jobs Act interim final rule is to expand the 504 loan program to include a refinancing component that does not involve small business expansion. This is a two-year program that is authorized through September 27, 2012. The interim final rule will promote better understanding of Agency requirements by CDCs, lenders, and small business borrowers.

#### B. Baseline Costs

As this is an addition to the existing 504 program, there is no historical cost data for this new program component for comparison or projections. Similar costs may be assumed based on the historical costs for the 504 loan program, as the application for the Jobs Act 504 refinance program is expected to be almost identical to the existing application and eligibility checklist for the existing 504 loan program. The costs to CDCs will vary between ASM (Abridged Submission Method) CDCs and non-ASM (non Abridged Submission method) CDCs, as loan packages from ASM CDCs have an abridged list of required documents to submit. Based on historical ASM and non-ASM submissions, SBA anticipates that 68% of 504 debt refinance loan volume will be ASM loan packages and 32% will be non-ASM loan packages.

SBA anticipates that 21,300 refinance loans will be processed, of which 14,484, or 68%, are estimated to be submitted by ASM CDCs and 6,816, or 32%, are estimated to be submitted by non-ASM CDCs.

Based on the length of time SBA takes to review and process 504 applications, SBA is estimated to take an average of 8.4 hours to review and respond to ASM applications and 8.7 hours to review and respond to non-ASM applications.

#### C. Potential Benefits and Costs of the Interim Final Rule

##### (a) Potential Benefits and Costs to Lenders

The interim final rule would improve access to capital for businesses with the need to refinance but that will not be expanding their business. The cost differential between an application for the regular 504 program and the Jobs Act 504 debt refinance program application and checklist are negligible.

The ability to refinance debt will improve the small businesses cash flow, improve their financial ability to operate, improve the long-term viability of the small business, and facilitate job retention. Another potential benefit is the reduction in the number of loan servicing actions due to deferments or catch-up plans and reducing the likelihood that the business might be overcome by its indebtedness burden which could result in liquidation. Fewer servicing actions would potentially reduce the cost to CDCs and reduce the number of delinquent, deferments, default and liquidation cases. These changes would reduce the costs of loan servicing and liquidation processes for lenders as well.

SBA does not know of any specific additional costs that would be imposed on CDCs or lenders as a result of this interim final rule. SBA is requesting comments from the public on any monetized, quantitative or qualitative costs of CDC and Lender compliance with this rule. Please send comments to the SBA official referenced in the Addresses section of the preamble.

##### (b) Potential Benefits and Costs to CDCs and Borrowers

As provided by the Jobs Act, the interim final rule contains a provision that temporarily expands the ability of a small business to use the Section 504 Certified Development Company Loan program to refinance certain qualifying existing debt. To implement this new program, CDCs will package 504 debt refinance loan applications and service these loans for small business borrowers. For Borrowers, the cost benefit of lower interest rates and improved financial terms would significantly outweigh the costs of preparing the Jobs Act 504 debt refinance application and checklist in order to apply for the assistance provided by the program.

CDCs would benefit from increased loan volume due to the Jobs Act 504 debt refinance project. This new program will meet a new market demand for 504 debt refinancing for projects that do not involve expansion.

This will increase CDC income from packaging, processing, servicing and closing income as a result of the program, which would far outweigh any burdens associated with the preparation and submission to SBA of 504 debt refinance loan applications. As CDCs are delivering the 504 program, the increased cost to provide the SBA 504 debt refinance program will be negligible when compared to the substantial increase in CDC revenue.

SBA expects that CDCs and Borrowers would incur some additional costs as a result of this interim final rule. Due to the increased risk of 504 debt refinance applications as compared to the current 504 program, and in accordance with the Jobs Act, a supplemental subsidy fee of 29.4 basis points, or .294%, will be imposed on Borrowers to cover the additional cost attributable to the refinancing of qualified debt.

The costs to CDCs will vary between ASM (Abridged Submission Method) CDCs and non-ASM (non Abridged Submission method) CDCs, as loan packages from ASM CDCs have an abridged list of required documents to submit. Based on historical ASM and non-ASM submissions, SBA anticipates that 68% of 504 debt refinance loan volume will be ASM loan packages and 32% will be non-ASM loan packages.

SBA anticipates that CDCs would likely submit to the Agency for approval an estimated 21,300 504 debt refinance applications over the two-year period of the program. This is a significant increase of the SBA program current 8,500 annual 504 loan application volume.

For ASM CDCs, SBA estimates that the average time for completion of each application would consist of 8.4 hours at an average cost of \$45 per hour. Therefore, the annual costs of submitting 504 debt refinance applications under the interim final rule would be 14,484 loan applications  $\times$  8.4 hours for an estimated cost of \$45/hour for a two-year total of \$5,474,952.

For Non-ASM CDCs, SBA estimates that the average time for completion of each application would consist of 8.7 hours at an average cost of \$35 per hour. Therefore, the annual costs of submitting 504 debt refinance applications under the interim final rule would be 6,816 loan applications  $\times$  8.7 hours for an estimated cost of \$45/hour for a two-year for non-ASM debt refinance applications of \$2,668,464. The total estimated annual costs for ASM and non-ASM applications combined would be \$8,143,416 for the two-year period of the Jobs Act.

For the CDCs, there are duplication and shipping costs associated with loan

submission. Based on historical cost information for the 504 program, the copying and shipping costs using ASM ranges from \$15–\$50 per loan package and for non-ASM \$25–\$60 per loan package. This variance in costs depends on the complexity of the loan application and whether the application is submitted through the ASM or non-ASM Method.

SBA is requesting comments from the public on any monetized, quantitative or qualitative costs of CDCs compliance with this rule. Please send comments to the SBA official referenced in the **ADDRESSES** section of the preamble.

(c) Potential Benefits and Costs for SBA and the Federal Government

The interim final rule would benefit SBA because it would enable the Agency to increase access to capital to small business borrowers to refinance debt without expansion during the temporary period of this debt refinancing program. This would result in the submission of an estimated 21,300 504 debt refinance applications.

In order to carry out this new program, SBA will hire 50 additional staff for the Sacramento Loan Processing Center at an average cost of \$92,000 per staff member per year, or an annual estimated salary total of \$4,600,000 or a 2 year total of \$9,200,000.

As indicated above, SBA anticipates that 21,300 refinance loans will be processed, of which 14,484, or 68%, are estimated to be submitted by ASM CDCs and 6,816, or 32%, are estimated to be submitted by non-ASM CDCs.

Based on the length of time SBA takes to review and process 504 applications, SBA is estimated to take an average of 8.4 hours to review and respond to ASM applications and 8.7 hours to review and respond to non-ASM applications. For ASM applications, this equates to 8.4 hours at \$45 hour  $\times$  14,484 applications for an estimated cost of \$5,474,952 for ASM refinance loan application for the two-year program period. For non-ASM applications, this equates to 8.7 hours at \$45 hour for an estimated cost  $\times$  6,816 for a total annual estimated cost of \$2,668,464 for non-ASM refinance loan application. SBA estimates the combined cost of reviewing ASM and non-ASM applications to be \$8,143,416 for the two year period of the Jobs Act.

Furthermore, the Agency must hire two full-time staff for lender oversight at an average cost of \$135,000 per year or a total of \$540,000 for the two-year period of the Jobs Act. In addition, contract dollars of \$105,000 per year, or \$210,000 for the two-year period of the Jobs Act, will be utilized to assist with

analysis and oversight. The total estimate cost of oversight of the 504 debt refinance program for the two-year period of the Jobs Act is estimated at \$750,000.

D. Alternatives to Interim Final Rule

This interim final rule is SBA's best available means for achieving its regulatory objective of implementing the Jobs Act debt refinance program authorized by Public Law 111–240, 124 Stat. 2504, enacted on September 27, 2010. SBA is requesting comments from the public on any potentially effective and reasonably feasible alternative to this rule as it applies to CDCs and Lenders and the costs and benefits of those alternatives. Please send comments to the SBA official in the **ADDRESSES** section of the preamble.

SBA has not identified any reasonable alternative to this interim final rule to implement this new debt refinancing authority.

*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 13563*

To the extent practicable given the need to make this temporary, 2-year refinance program operational expeditiously in order to assist as many small businesses as possible, this rule was developed in keeping with the intent of this Executive Order. SBA solicited suggestions and comments on how best to implement the Jobs Act from the affected stakeholders and the public as a whole. SBA provided notice of a public forum in the **Federal Register**, which was held in Boston, Massachusetts on November 17, 2010. More than 100 persons attended in person or by phone and 23 individuals provided testimony. In addition, SBA announced a Web site and solicited comments for a 30 day period. The final

structure of the program was significantly shaped by those comments, especially the decision to keep the same basic 504 financing structure for same institution debt refinancing as for a new institution refinancing another lender's debt.

By adhering as closely as possible to the procedures and conditions of SBA's existing permanent 504 refinancing program, any burden that this rule may have imposed on the affected stakeholders is lessened. In addition, SBA adopted a new procedure with this rule that specifically addresses concerns that were raised in public comments regarding the burden that has been imposed in the permanent 504 refinancing program by requiring lenders and borrowers to document that all of the proceeds of the debt being refinanced was used for eligible collateral. As indicated by the stakeholders, this requirement is especially difficult if a property has been refinanced more than once or if the initial lender had been acquired by another lender. In practice, the process was costly and time consuming for the borrower, lender and SBA personnel and, upon review, it rarely led to significant amounts being excluded from the refinancing. In this rule, SBA has adopted a more practical, less costly approach that relies on borrower and lender certifications, subject to random sampling to verify the amounts being refinanced. In addition, the rule allows the refinancing if substantially all of the proceeds of the debt being refinanced was used for eligible collateral. This rule will make that change to the permanent refinance program as well as this temporary one.

#### *Paperwork Reduction Act*

The SBA has determined that this rule imposes no additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### *Regulatory Flexibility Act*

Because this rule is an interim final rule, there is no requirement for SBA to prepare a Regulatory Flexibility Act (RFA) analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of these small entities. However, the RFA requires such analysis only where notice and

comment rulemaking is required. As discussed above, SBA has determined that there is good cause to publish this rule without soliciting public comment. This rule is, therefore, exempt from the RFA requirements.

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

Loan programs—business, Small businesses.

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

#### **PART 120—BUSINESS LOANS**

- 1. The authority for 13 CFR 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 697(a) and (e); Public Law 111–5, 123 Stat. 115, Public Law 111–240, 124 Stat. 2504.

- 2. Amend § 120.130 by revising paragraph (b) to read as follows:

#### **§ 120.130 Restrictions on uses of proceeds.**

\* \* \* \* \*

(b) Refinancing a debt owed to a Small Business Investment Company (“SBIC”) or a New Markets Venture Capital Company (“NMVCC”);

\* \* \* \* \*

- 3. Amend § 120.882 by revising paragraph (e)(1) and adding new paragraph (g) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(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;

\* \* \* \* \*

(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. For loans approved during Fiscal Year 2011, this supplemental annual guarantee fee will be 0.294%. For loans approved during Fiscal Year 2011, the annual guarantee fee assessed under § 120.971(d)(2) and the supplemental annual guarantee fee will total 1.043% on the unpaid principal balance of the debenture. If the total amount of the guarantee fee changes for loans approved during Fiscal Year 2012, SBA will publish a Notice of the change in the **Federal Register**;

(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 not less than 50% from the Third Party Lender, 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) 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, but in no event may it exceed the outstanding principal balance of the qualified debt;

(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 the acquisition of Eligible Fixed Assets;

(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 1 year preceding the date of application. For the purposes of this subparagraph (vi), "current on all payments due" means that no payment scheduled to be made during the one year period was either deferred or more than 30 days past due. Any delinquency in payment of 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.

■ 4. Amend § 120.884 by revising paragraph (a) to read as follows:

**§ 120.884 Ineligible costs for 504 loans.**

\* \* \* \* \*

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

\* \* \* \* \*

Dated: February 10, 2011.

**Karen G. Mills,**  
*Administrator.*

[FR Doc. 2011-3470 Filed 2-16-11; 8:45 am]

BILLING CODE 8025-01-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2010-1032; Airspace  
Docket No. 10-AGL-20]

#### Amendment of Class E Airspace; Muncie, IN

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Muncie, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Ball Memorial Hospital Heliport, Muncie, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the heliport.

**DATES:** Effective date: 0901 UTC, May 5, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321-7716.

#### SUPPLEMENTARY INFORMATION:

##### History

On November 8, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Muncie, IN, creating controlled airspace at Ball Memorial Hospital Heliport (75 FR 68552) Docket No. FAA-2010-1032. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, an error was found in the regulatory text noting the wrong airport name. This rule will make the correction.