NADCO TechBriefs
15-21 August 10, 2021

504 Debt Refinance Questions & Answers

On July 29, 2021, SBA published the Interim Final Rule (IFR) and Policy Notice implementing changes to 504 debt refinance programs made by the Economic Aid Act enacted December 27, 2020. SBA held a national Connect Call on that day to review the changes. NADCO submitted a list of specific questions to SBA leadership to help our members better understand the changes. SBA has provided answers to NADCO's questions and also answers to other questions that were submitted during and after SBA's Connect Call. We are providing those questions and answers to better assist our members, their lending partners, and their small business borrowers navigate the changes to the 504 debt refinance programs.

NADCO-Submitted Questions

Qualified Debt

1. **Previously SBA said that the debt to be refinanced had to be at least 2 years old as measured from date of last disbursement. Is SBA now requiring the debt to be at least 6 months old from date of last disbursement to be Qualified Debt?**

   The timeframe to determine eligibility as a Qualified Debt is six months from the last advance.

2. **Can a conventional loan be refinanced in whole or in part or must the entire loan meet the 85%/15% test to be eligible for 504 debt refinance?**

   No. The conventional loan must be refinanced in whole. See Policy Notice 5000-808830, pages 1-2 and 4.

3. **If the Applicant has a second mortgage loan on the Project Property and that loan does not meet the requirements for Qualified Debt (i.e., the loan proceeds financed permanent working capital / business operating expenses and not Eligible Fixed Assets), can that second mortgage loan be paid off with EBE the same way EBE can pay off a line of credit or business credit card when they are used for business expenses?**

   No. The second loan must meet the definition of "Qualified Debt" to be included in the project. See Policy Notice 5000-808830 page 2 "May consist of a combination of two or more loans, provided that each of the loans satisfies the Qualified Debt requirements."

Current on All Payments Documentation Required

4. **Previously, SBA has looked back 12 months for modifications to the existing debt to be refinanced for changes to collateral or guarantors. Is that lookback timeframe now reduced to 6 months with the new 504 debt refinance without expansion regulations?**

   12 months or the available number of months as the debt must have been in place 6 months

5. **SBA Notice 5000-808830, paragraph (5) at the bottom of page 6 of 8 appears to have a typo regarding verification of the lien(s) at application. As the regulations reduce the Qualified Debt from**

2 years old to 6 months old, shouldn't this paragraph read "...and state in its credit memorandum that it has verified that the lien(s) has been in place for at least <u>6 months</u> prior to the date of application...."?

OFA will incorporate this correction in the upcoming SOP 50 10 6 update.

<u>Substantial Benefits</u>

6. **Does a loan with a balloon payment automatically satisfy the "substantial benefits test" as it does for 504 debt refinance with expansion projects and for SBA 7(a) loans?**

   This is situational depending on the length of time of maturity on when the loan term ends on the balloon. If it is within 5 years or less, it would be eligible.

   <u>NADCO Clarification</u> – according to SBA's response, if the balloon balance comes due within 5 years or less at the time of SBA application, the presence of the balloon payment automatically meets the "substantial benefits test."

<u>Eligible Business Expenses</u>

Cap on EBE did not Change Due to Economic Aid Act

7. **Was there any specific reason why SBA retained the maximum 20% cap on new funds for EBE with a maximum loan to value of 85%? This limitation was not in the original legislation from December 2015 or the current legislative text from the Economic Aid Act in December 2020.**

   The Economic Aid Act did not require a change in the EBE at 20% cap.

<u>Alternative Job Goal</u>

8. **504 Debt refinancing without expansion project must meet an economic development goal just as all 504 projects must. Under the new regulations, an alternative job retention goal has been reinstated. Please confirm that for small manufacturers, the alternative job retention goal will be 1 job per $120,000 to harmonize with existing longstanding SBA guidance for applicants that are small manufacturers.**

   The 504 refi regulations did not revise the public policy dollar per jobs for small manufacturing. For small manufacturers the dollar per job requirement is 1 job per $120,000.

<u>Refinancing 504 Loans</u>

9. **Now that CDCs can effectively modify an existing 504 loan by refinancing that 504 loan into a new 504 Project, does SBA require a letter or confirmation from the incumbent CDC expressing its inability or unwillingness to refinance the existing 504 loan before allowing another CDC or 7(a) lender to refinance the existing 504 loan?**

   No letter from the CDC whose loan is being refinanced is currently required. OCRM will be monitoring the instances of CDCs refinancing other CDC loans. SBA notes that CDCs would be expected to display professional courtesy between CDCs on coordination on efforts to assist 504 borrowers and small businesses. CDCs with a concern about compliance issues of a CDCs may report their concerns to OCRM.

NADCO Clarification – NADCO is actively advocating for SBA to require written verification from the existing CDC of its inability or unwillingness to refinance the existing 504 loan prior to allowing that 504 loan to be refinanced by another CDC or 7(a) Lender – in either the 7(a) loan program, the 504 debt refinance **without** expansion program, or the 504 debt refinance **with** expansion program.

Refinancing 7(a) Federally Guaranteed Loans

10. **Notice 5000-808830 indicates that an existing 7(a) loan can be refinanced in whole or in part. The new 504 debt refinance regulations require Qualified Debt to meet the "substantially all (85%/15%) test". Does this mean that in refinancing an existing 7(a) loan, the Applicant small business can use 504 debt refinancing programs to refinance that portion of the 7(a) loan that meets the 85%/15% test, and any remaining balance of the 7(a) loan would need to meet the requirements of paragraph 10.e. as revised by Notice 5000-808830?**

    It is in the discretion of a 7(a) lender of whether the lien will be released.

11. **If the current 7(a) lender is the prospective TPL lender and it has not sold the existing 7(a) loan into the secondary market, are there any circumstances where that 7(a) loan may be eligible for refinance with 504?**

    Yes. Please refer to the same institution debt refinancing requirements in Policy Notice 5000-808830 and SOP 50 10 6 in the debt refinancing Core Requirements on page 231, paragraph i.

    NADCO Clarification – it appears that SBA is referring to a provision from the 7(a) – specific portion of SOP 50-10-6 (page 231) reprinted below for convenience. An existing 7(a) loan can be refinanced in a new 504 Project with the existing 7(a) lender serving as the Third Party Lender, provided one of the two conditions below is met –

    i. It is unable to modify the terms of the existing loan because a secondary market investor will not agree to modified terms, or
    ii. An increase in the amount of an existing SBA-guaranteed loan is not possible.

12. **If the existing 7(a) lender agrees to modify the payment schedule but the 504 refinance is more advantageous (i.e., more savings with the 504 refinance), can the 504 refinance proceed given the 7(a) lender was unwilling to modify the existing 7(a) loan to match the potential savings offered by a 504 refinance?**

    Once the CDC receives from the borrower the lender's response to modify the loan and the 504 refinancing alternative would provide a better financing option for the borrower, then CDC can proceed with the project. The lender is only asked for a modification response one time. They have the opportunity to offer modification terms that are competitive with the 504 refinancing, or they will provide their best available option and the borrower can then decide if this meets their financing needs or they choose to proceed with a 504 loan. However, if the lender offers to modify their loan and the 504 refinancing option would not provide a 10% substantial benefit to the borrower, the 504 loan may not proceed.

13. **Is an email from the existing 7(a) lender acceptable "in writing" verification of the lender's unwillingness or inability to modify the current payment structure?**

    This can be either in a letter from the lending institution or in an official email. The letter or email must be from an official of the lending institution with the authority to make the commitment to modify the loan terms requested by the borrower. Lender's Official email or letter.

14. **An existing 7(a) loan can be refinanced with 504 "if the CDC verifies in writing that the present lender is either unwilling or unable to modify the current payment schedule." Is there a waiver possibility if the CDC and Applicant can document multiple attempts to get written verification from the existing 7(a) lender and the exiting 7(a) lender is non-responsive? Without a waiver possibility, an existing 7(a) lender can effectively not respond and prevent a small business from using 504 refinance programs to lower its cost of capital and generate a "substantial benefit". This seems contrary to SBA's mission and can be detrimental to the small business applicant through no fault of that applicant.**

    There is no waiver provisions for the requirement for a 7(a) lender response to the borrower's request to modify a 7(a) loan. It is the borrower's responsibility to contact the lender and provide the lender response information to the CDC. This can be either in a letter from the lending institution or in an official email. The letter or email must be from an official of the lending institution with the authority to make the commitment to modify the loan terms requested by the borrower. The OCC is the bank regulator and would expect a lender to be responsive to all requests from a borrower. The CDC needs to work through the borrower to obtain the documentation and not contact the lender directly on behalf of the borrower. CDC are aware that lenders may report inappropriate CDC outreach on 504 refinancing projects to OCRM for review and enforcement as needed.

<u>Additional Collateral</u>

15. **If "additional collateral" was taken in abundance of caution to meet SBA 7(a) requirements (it was not Project Property acquired with loan proceeds), must the CDC retain that additional collateral with a 504 refinance Project if the Project Property alone meets SBA appraisal and loan to value requirements?**

    SBA would apply the same standard to additional collateral taken by an SBA 7(a) lender as an abundance of caution in the same manner as the 504 currently review additional collateral taken by a 504 lender as per 13 CFR 120.920(b). If additional collateral would not be included in the 504 refinancing project, the requirements in event of liquidation would not be applicable.

    > § 120.920 Required participation by the Third Party Lender.
    >
    > (b) Third party loan collateral. The 504 loan is usually collateralized by a second lien on Project Property. The Third Party Lender may obtain additional collateral or other security for the Third Party Loan ("Additional Collateral") only if in the event of liquidation and unless otherwise approved in writing by SBA:

The Third Party Lender liquidates or otherwise exhausts all reasonable avenues of collection with respect to the Additional Collateral no later than the disposition of the Project Property, and

The Third Party Lender applies any proceeds received as a result of the Additional Collateral to the balance outstanding on the Third Party Loan prior to the application of proceeds from the disposition of the Project Property to the Third Party Loan.

[64 FR 2118, Jan. 13, 1999, as amended at 79 FR 15650, Mar. 21, 2014]

Refinancing Federally Guaranteed Loans for Agencies Other than SBA

16. If a loan being refinanced is guaranteed by a Federal agency other than SBA, are 7(a) lenders required to document in writing that refinancing of the Federally-guaranteed loan is permissible under the other Federal agency's requirements or is otherwise approved by the other Federal agency?

Yes, the 7(a) lenders are required to document the eligibility of other Federal Loan refinancing. Non-delegated lenders submit their 7(a) loan packages to the Citrus Heights 7(a) loan processing center for review. Delegated lenders retain the documentation in their files.

Additional Questions from SBA 504 Refinance Webinar held 7/29/2021
Responses provided by SBA

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504 Refinancing Funds Allocation

1. Does debt refinancing with expansion come from the regular 504 loan allocation or the 504 refinancing loan allocation?

They are separate authorization levels approved by Congress. For FY 21, SBA was authorized $7.5 billion for the 504 program and a separate $7.5 billion for 504 refinancing without expansion. The total 504 authorization level for FY 21 was $15 billion. There is a slightly higher subsidy fee added to 504 refinancing without expansion projects.

New Lender Interest in 504 Refinancing

2. What is the process for a lender, who is not currently involved with the 504 loan process, to get involved and assist any of their customers that may benefit from a refinance?

Contact your local district office. They can provide you with a resource directory that lists all CDCs in your service area. Then contact the CDCs and advise them of your interest to participate more in the 504 program.

Qualified Debt

3. **"Incurred not less than 6 months prior to date of application" Is this still 6 months from date of last advance/draw or date the qualified debt is closed or first disbursed?**

   The six months begins from the date of the last advance.

4. **Does the business still have to have been in business for at least two years (part of existing qualified debt definition) but the debt now just has to be at least 6 months old, correct?**

   Yes, the business (the OC) has to have been in operation for 2 years to be eligible for 504 refinancing without expansion. The qualified debt has to have been incurred with the last 6 months.

5. **If a seller note is part of the refinance do we still have to wait 2 years for that?**

   The small business and the CDC must wait 6 months on a loan to be eligible for refinance. The business must have been in operation for 2 years.

6. **An existing company (more than two years old old) is constructing a new location. It obtained a 5/20 year loan and would like to refinance with a 504 loan. Is this eligible?**

   If the second location is under the same OC and the 2nd location debt was incurred 6 months ago and the debt also meets the Qualified Debt requirements of SOP 50 10 6 as update by Policy Notice 5000-808830, it would be eligible.

7. **If a new business constructed a property with a conventional loan that has entered principal and interest payments, how long do you have to wait now to refinance under a 504 structure?**

   Six months from the date of last disbursement.

8. **Is a seller mortgage rather than the commercial loan eligible for 504 refinancing?**

   If the seller is carrying back, it could be potentially eligible.

9. **If a business owner had no debt when starting his business and later bought out his partner and that bank loan is secured by the project real estate and the appraisal justifies the project, is this loan considered eligible?**

   That loan would need to meet the Qualified Debt requirement as per SOP 50 10 6 as updated in Policy Notice 5000-808830.

10. **What if the borrower received a loan that was used for both the acquisition of CRE and goodwill (both secured by the CRE) but there was no allocation of the purchase price between the two in the original purchase? Would this be ineligible for refinance given there is no way to delineate specifically how much was used for eligible qualified debt?**

    Please refer to SOP 50 10 6 and Policy Notice 5000-808830 for "Qualified Debt" requirements.

11. **Would we be able to include any costs in the refinance? for instance new reports, loan fees, prepay penalties**

    Please refer to Policy Notice 5000-808830 and SOP 50 10 6 provides guidance on expenses that can be included.

12. **What is required for FFE fixed assets refinance that is not real estate and equipment only?**

    Please refer to SOP 50 10 6 and Policy Notice 5000-808830. SLPC states they've never seen a FFE fixed assets refinance, only fixed assets, land, building and equipment.

13. **A small business has a contract for deed of $500K, a 15 month old loan with balance of $400K, and the business in operation for over 2 years. The appraisal values the facility at $100K. What is the borrower equity?**

    The difference between the current appraised value and the balance of the liens that are on the eligible fixed asset would be the borrower's equity.

14. **If a borrower received a construction loan which originated 8 months ago, and construction wrapped up 4 months ago and the bank termed out the loan (there have been disbursements within the last 6 months) must this borrower wait until 6 months w/o any new disbursements before they are eligible?**

    The borrower and CDC would have to wait 2 more months before submitting the project before it is eligible.

15. **If 100% of loan proceeds were originally used to purchase commercial real estate, but the loan has been refinanced 3 times over the years, and funds were taken out for business purposes, can we do a refinance without expansion? Assuming the most recent loan would not meet the 85/15 requirement, but the original loan did meet that requirement.**

    Yes, it may be eligible. SLPC would also review the CDC's credit memorandum, and this could be a credit issue.

    NADCO Clarification – SOP 50-10-6, page 463, paragraph 10.c.iii.a)ii) addresses this issue and clearly indicates that SBA applies the 85%/15% test to the "original loan".

16. **What documentation do you require to be held to verify Qualified Debt and EBE uses of funds? Copies of original documents of the debt being refinanced? Is a borrowers assertions sufficient, or do you require documents?**

    Please refer to SOP 50 10 6 and Policy Notice 5000-808830 and Form 1244 under Exhibits.

17. **For a refi without expansion with no EBE, can the CDC be over 40%? For example, 1st lien 45%, 2nd lien 45%, contribution 10%?**

    No.

Eligible Fixed Assets

18. **Under "Eligible Fixed Assets", can we include trucks? i.e., short haul and long haul rigs, dump trucks, etc.**

    No.

19. **Can 504 refinance be used for long-term fixed assets (10 years+)**

    The 504 maturity terms in SOP 50 10 6 apply to 504 refi loans with and without expansion. The term should not exceed the existing useful life of the asset.

20. **Do we have to go back through notes since the beginning still to prove the 85%?**

    For eligibility, you need to establish that the original note meets the 85%.

    NADCO Clarification – see Q&A #15 above for more information.

Current on All Payments Documentation Required

21. **Does the change from 2 years to 6 months apply to refinancing "without expansion" only? If yes, why?**

    Yes. The Economic Aid Act and therefore the 504 refinancing IFR did not make the change in refinancing with expansion.

22. **Do deferred payments on an SBA portion of a 504 also not require to be brought current for the refi program**

    SBA approves a catch up plan for deferred 504 loan payments. The borrower would need to be current on catch-up payments in order for the 504 loan to be eligible for refinancing. When catch-up payments are not current, the 504 loan is considered delinquent and therefore not eligible for refinancing.

23. **The debt refinancing interim final rule (IFR) notes a borrower may have past due payments due to deferment and still be eligible. If loan is current now, but was delinquent, isn't that still eligible? (Credit decision). For example: Borrower is current on payments, but is in default on their debt service coverage covenant?**

    The CDC will need to document that the loan is eligible in their credit memorandum. The CDC should look at whether the loan is current, or if the loan was deferred. The CDC should also make a credit decision by looking at the borrower's repayment history historically and the reason that any lender covenants may have been imposed or were violated. Not all covenants indicate a credit problem. Payment problems or trends are a credit issue and could cause the 504 loan to be declined if significant.

24. **During the COVID-19 pandemic, a borrower's payments were deferred and eventually the OC paid back all interest with the remaining principal of the deferred amount added to the loan balance. Would this be eligible? All payments have been made on time since the loan was brought current.**

    It would appear to be eligible. We would need more detail. Any increase in the debt would be a credit issue that would need to be addressed in the credit memorandum.

Transcripts to Document Loans Are Current On All Payments Due

25. **Historically with the 24-month refinance, SBA has looked back 12 months for changes to collateral or guarantees. Will the 12 month requirement remain in place if the loan to be refinanced has been in place for longer than the new 6 month requirement?**

    This will now be a 6 month look back rather than a 12 month look back from SLPC.

26. **How far back does the transcript of account need to cover under the new rule for older debt? 12-months? The prior requirement for Transcripts of the debt to be refinanced was for the preceding 12 months, dated within 30 days. What parameters is SLPC looking for under the new rules.**

    Twelve (12) months or months available if the debt to be refinanced is newer than 12 months and at least 6 months.

27. **Can 12 months of bank statements on the loan replace the need for transcripts if the statements show the monthly activity including date the loan payment was received?**

    No, unless the debt is privately held. SLPC will want to see a financial institution transcripts for all commercial loans and refinanced 7(a) loans.

28. **Does the CDC still need to send lien documentation with the refinance application?**

    Please follow the instructions on Form 1244 as revised and follow the exhibit instructions based on your CDC status as ASM, non-ASM or PCLP.

29. **Does the CDC need to send lien documentation at application?**

    Please follow the Form 1244 Exhibit requirements based on your CDC status as ASM, non-ASM or PCLP.

Special Purpose Property Projects

30. **Was there a change with a special purpose Project and borrower down payment portion?**

    Not as of July 29, 2021. If there is change, SBA will announce it in the Federal Register.

    NADCO Clarification – Currently (8/10/2021), SBA is allowing special use properties to be refinanced at the full 90% loan to value (LTV). The 504 debt refinance regulations allow SBA to allow special use projects to be refinanced in the 504 debt refinance without expansion program without the usual extra 5% borrower contribution during an economic recession. The US economy entered recession in

February 2020. SBA issued a notice in the Federal Register announcing this change effective 8/3/2020 "until the first day of the calendar quarter following the end of the economic recession as determined by the National Bureau of Economic Research or its equivalent." As of mid-July 2021, the National Bureau of Economic Research has yet not announced an end of the declared recession. See NADCO Technical Issues Memo 34-20 for more information.

31. **On the refi, what about a special use property? does the TPL need to be at 50%?**

    Not for 504 refi **without** expansion. Yes for 504 refi **with** expansion or for all other 504 loans.

Decision to Submit as Either 504 Refinancing With or Without Expansion must be Determined

32. **Can we have a 504 refi without expansion loan and a 504 refi with expansion loan at the same time? I have a business that wants to refinance older debt in a separate loan. The expansion project would be a separate loan.**

    No.

Substantial Benefits

33. **To summarize, the new TPL and CDC payment needs to be 10% lower than the existing payment of the qualified debt?**

    Yes. See Policy Notice 5000-808830 which provides details on requirements for substantial benefit calculation and documentation.

34. **Does the 10% substantial benefit refer to a 10% reduction in annual debt service?**

    The 10% substantial benefit is defined in Policy Notice 5000-808830. Please refer to the policy notice.

Business Year in Operation for Eligibility

35. **Does the business still need to be 2 years old?**

    Yes, if the project involves 504 refinancing without expansion.

36. **For 504 refinancing without expansion, will the business still need to be 2 years old or is that changed to 6 months as well?**

    The business must be 2 years old or older to be eligible for 504 refinancing. See Policy Notice 5000-808830 page 3 "b. The Applicant must have been in operation for all of the 2-year period ending on the date that the application is submitted, as evidenced by the financial statements submitted at the time of the application."

37. **For the in operation 2 years standard. Can you confirm that this is the OC not the EPC?**

    The OC must have been in operation for 2 years.

38. **If a debt was used to acquire real estate and an existing business (more than 24 months in business) 6 months ago and at least 85% of the debt was for eligible 504 purposes, does the fact that an existing business was acquired qualify the business as being at least 24 months old even through our borrower has only owned it for 6 months?**

    SLPC will review the CDC's determination of whether the business is "new" as per the guidance in SOP 50 10 6. Changes of ownership may or may not result in the business being determined as a "new business." SLPC would need to concur with CDCs determination. See Policy Notice 5000-808830 page 3, "If the business has been in operation for more than 2 years at the time of the application, and there has been a change of ownership in the business, the CDC must determine, under the standards contained in the definition of New Business in SOP 50 10 6 Appendix 3, whether the Applicant should be considered a New Business and the application declined. The CDC must document the justification for its determination in its credit memorandum."

39. **If a new business has established ownership with extensive experience and would be eligible for the extra 5% equity waiver, would a refinance without expansion be eligible if the qualified debt is more than 6 months old but business operations under 2 years old?**

    If the business is under 2 years old, it is not eligible for 504 refinancing without expansion.

<u>Total 504 Refi without Expansion Project Based on Appraised Value</u>

40. **With the qualified debts changes to 6 months, is the 504 project based on the appraised value or cost?**

    Appraised value.

<u>Appraisals for 504 Refinancing</u>

41. **Any changes in the timing of the appraisal in any refi circumstance?**

    No changes. See Policy Notice 5000-808830, page 6.

<u>Eligible Business Expenses</u>

42. **What are eligible business expenses?**

    EBE are defined in Policy Notice 5000-808830, page 3.

43. **Is the EBE limited to 20% of the project or 20% of the appraised amount?**

    The appraised amount is the total project size for a 504 refinancing without expansion project. Therefore, EBE is limited to 20% of the appraised amount which is the total project size.

44. **Can EBE be used for business consultant fees?**

    Potentially. They would need to be justified, explained and non-related party transactions. See also definition of EBE above from Policy Notice 5000-808830, page 3.

45. **For the EBE that's within 18 months of Application, does the CDC have to get evidence of payment and retain in the file after debenture funding?**

    Yes, and OCRM will review the documentation in the CDCs file during an OCRM review.

    NADCO Clarification – NADCO has clarified with SBA that the CDC must itemize all EBE in the CDC credit memo. Post-funding, it is the Borrower's responsibility to maintain all records for how the EBE was actually spent – the TPL and the CDC are not required to collect this information unless OCRM requests it from the Borrower during any future review.

46. **On the EBE - if someone is refinancing $100,000 worth of qualified CRE debt and the property is appraised for $1,000,000, can't the EBE be $200,000 (20% of project) and therefore exceed the qualified debt?**

    No. The purpose of 504 refinancing is to allow a small business owner to refinance its qualified debt of the eligible fixed assets of land, building and equipment to improve its installment payments to improve cash flow and save on interest and costs over time. It was not the primary purpose of 504 refinancing to leverage its property value to pay for expenses other than fixed assets. SBA allows limited EBE to be included in the project, as it is uncommon to have a transfer of a note to be refinanced without some EBE included in a project. A straight fixed asset to fixed asset refinance is rare.

    NADCO Clarification – NADCO has asked SBA to reconsider this answer, as there is nothing in regulation or SOP that requires the Qualified Debt to exceed the amount of EBE. Existing regulation and SOP allow a 504 debt refinance without expansion project at a maximum 85% loan to value (LTV) when there are new funds for EBE and the amount of the EBE cannot exceed 20% LTV. There is no requirement in regulation or SOP that the debt refinance amount must exceed the EBE amount.

Alternative Job Goal

47. **What is the alternative job goal?**

    For 504 refinancing without expansion, due to the Economic Aid Act and IFR issued July 29, 2021, a CDC and 504 borrower can count existing and new jobs for the dollar per job ratio.

    NADCO Clarification – under the Alternative Jobs goal, all existing jobs on a full time equivalent (FTE) basis can be counted as jobs retained by the 504 refinancing project.

48. **What about meeting public policy goals of job retention vs new job requirement that could keep a loan from being eligible?**

    The Economic Aid Act did not change the public policy goals. They remain the same.

    NADCO Clarification – all existing community development and public policy goals can be used to qualify a 504 debt refinance without expansion project – see SBA Policy Notice 5000-808830, page 4, paragraph 10.h. for more information.

49. **For the alternative job goal, can you confirm that we are allowed to use 1 job per $120,000 for manufacturers?**

    Yes.

<u>Same Institution Debt Refi</u>

50. **Can you describe how same institution debt is handled for a refinance of a 7(a) and 504 loans and when looking at the requirements for the interim loan.**

    Please review the Policy Notice 5000-808830, pages 7 and 8, for additional guidance on 504 SID refinancing which updates SOP 50 10 6. See also SOP 50 10 6 page 231 for 7(a) Same Institution Debt Refinance requirement.

51. **Are there restrictions on amortization so the same financing does not just keep getting extended out?**

    There could be credit considerations, but it isn't prohibited.

<u>Delinquent Loans Not Eligible for 504 Refinancing</u>

52. **If a loan is delinquent but the 504 refinancing will allow the business now to service the debt** successfully, is that allowed?

    No. The debt must be a qualified debt at time of application.

<u>Energy Public Policy and 504 Refinancing without Expansion Cannot be Combined</u>

53. **SBA 504 refi with expansion. If a borrower plans to install solar, and the SBA Maximum Guaranty may be reached or exceeded (perhaps they have an SBA 7a loan and is not the subject note to be refinanced). Can we submit as a 504 Refi and also classified under the SBA 504 Green?**

    No.

    <u>NADCO Clarification</u> – the public policy goals related to renewable energy (10% reduction in energy consumption and 15% renewable energy production) are not available for use in a 504 debt refinance **<u>without</u>** expansion project, as both goals imply "expansion" to include new renewable energy improvements to meet the respective public policy goal. These public policy goals **<u>are</u>** available for use in 504 debt refinance **<u>with</u>** expansion.

<u>New Form 1244 Updating for 504 Refinancing Requirements</u>

54. **Is this new 1244 form only for Debt Refi transactions or for all SBA 504 transactions? If the latter, how long is the old form good for non refi transactions (including deals in the SLPC queue for approval)?**

The new Form 1244 is for all 504 loans. Required immediately for 504 refi transactions (with or without expansion). We will allow a 30 day grace period for projects not involving refi before the new form is required.

55. When will the updated 1244 discussed be available on the SBA website?

It is available on the SBA website and in CAFS.

56. If the "old" 1244 has already been signed by the borrower on a project in-process, but not submitted to SBA yet, is there a "grandfather" period? Or do we need to have them resigned with the "new form"?

If the project involves refinancing without or without expansion, the new form is required as of July 29, 2021, and the prior version of Form 1244 would result in a screen out and you will have to resubmit on the current form. A 30 day grace period for those projects that do not involve refi with or without expansion.

<u>Refinancing 504 Loans</u>

57. Is it a possible for an existing 504 loan to be refinanced, along with the Third Party Loan for a lower interest rate?

Yes.

58. Are CDCs now able to refinance their existing 504 loans into a new 504 loan for lower rate?

Yes, and will need to follow the Substantial Benefit requirements and the Same Institution debt requirements by submitting to SLPC and to follow all requirements in SOP 50 10 6 and Policy Notice 5000-808830.

59. Is it a possible for an existing 504 loan to be refinanced, along with the Third Party Loan, for a lower interest rate?

Yes.

60. Can a borrower refinance a 504 loan with another CDC?

Yes

61. If our bank wanted to refinance an existing 504 loan in our portfolio with a new 504 loan due to a significant drop in debenture pricing (meeting the 10% cash flow improvement requirement), would this be eligible?

Yes, if you meet the requirements under SOP 50 10 6 as updated by Policy Notice 5000-808830.

62. A CDC has an existing 504 refinancing without expansion loan paying as agreed. The borrower is now doing a large addition (larger than the debt refi without expansion). Is it permitted to do a second 504 for the expansion and have SBA subordinate the current second mortgage?

If the CDC submits a 504 refinancing project where the previous loan was a 504 refinancing loan with expansion the TPL must be in 3rd and the 2nd 504 is in 4th lien. See CFR 120.882(g)(8).

NADCO Clarification – in 504 debt refinance without expansion program, the statute and regulation require the TPL portion to be in 1st lien position and the 504 portion to be in 2nd lien position, with no exceptions allowed. Consequently, if subsequent financing is approved, that debt must be in junior lien position to the 504 debt refinance without expansion already in place.

63. **When refinancing a 504 loan, is the interest due to the bond holder (through the next semi-annual month) eligible to be included in the project costs for the new 504 project? When refinancing a 504 Loan, does the amount being refinanced include any 504 prepayment premiums?**

    Yes. There would be credit concerns that need to be addressed by the CDC in the credit memorandum on pre-payment penalties due to debt.

64. **Will there be the same limitation on refinancing a 504 loan as there is a 7(a) loan (i.e., before a 504 loan can be refinanced from another CDC's servicing portfolio, the CDC servicing the 504 loan must refuse to pursue the refinancing)?**

    Please refer to the policy notice 5000-808830 which provides the federal debt refinancing conditions for the 504 refinancing program in detail.

65. **Do you see as a consequence of the new changes that larger CDC's will target smaller CDC portfolios and thereby reducing the overall number of CDC's? Is there a mechanism in place that would prevent that?**

    The Economic Aid Act allows federal debt including 504 and 7(a) to be refinanced. Please follow the guidance in Policy Notice 5000-808830 and the 504 refinancing interim final rule which implements the statute.

66. **Can we refinance a 1st mortgage Bank loan and a current 504 loan that is associated with the 1st mortgage?**

    As long as the TPL and the 504 are both refinanced in their entirely, they can be refinanced.

67. **If an existing 504 loan is refinanced, can we assume that prepayment penalties will still be assessed?**

    Yes. The substantial benefit calculation also must incorporate the costs of the prepayment penalty as well as all other fees and expenses and be included in the credit memorandum.

68. **When refinancing an existing 504 loan, is the new 504 loan eligible for the 3 months of payment relief?**

    No.

Refinancing 7(a) Federally Guaranteed Loans

69. **Does the "Substantial Benefit" apply to a refinance of an existing 7(a) loan for a refinance with expansion project?**

    Yes.

    NADCO Clarification – in 504 debt refinance **with** expansion, a substantial benefits test applies to **all** loans being refinanced; in 504 debt refinance **without** expansion, the substantial benefits test **only** applies to the refinance of existing government guaranteed debt.

70. **Are 7(a) loans that are in SBA 7(a) pools eligible to be refinanced into this 504 refi program? Are all loans in 7(a) pools would be eligible to be refinanced given "the lender is unable to modify the terms" because already in a pool?**

    Please see Policy notice 5000-808830.

71. **If you are refinancing a 7(a) loan that would have included working capital or other non-eligible 504 uses. To prove the 85% of eligible uses is the 7(a) authorization sufficient or is other documentation needed?**

    The 7(a) authorization would be sufficient to document qualified debt and eligible fixed assets. A letter or email from the authorized official of the lender is needed to document the substantial benefit of 10% and that the lender could not or would not modify terms to meet the borrower's needs in comparison to the 504 loan program terms and conditions.

72. **What if the current bank won't modify to acceptable term? As an example, many 7A are 2.75 plus prime variable. Current 504 is 2.8% fixed for 20 years. I see many banks doing 5-6% and fixing but not giving a rate based on today's rate structure with all-time lows. What are acceptable forms of documentation for the CDC file to demonstrate existing lender is unable to modify existing 7a loan.**

    Once the CDC receives from the borrower the lender's response by letter or email to modify the loan on their best available terms and the 504 refinancing alternative would provide a better financing option for the borrower, then CDC can proceed with the project. The letter or email must be official with the lender's letterhead or logo and from an official at the lending institution authorized to provide modified terms. The lender is only asked for a modification response one time. They have the opportunity to offer modification terms that are competitive with the 504 refinancing, or they will provide their best available option and the borrower can then decide if this meets their financing needs or they choose to proceed with a 504 loan. However, if the lender offers to modify their loan and the 504 refinancing option would not provide a 10% substantial benefit to the borrower, the 504 loan may not proceed.

73. **If a borrower is looking to refinance an existing 7A loan and they have made multiple email attempts to contact the 7A lender to see if they will modify their loan AND the borrower does not received feedback, can these emails be used to meet the 504 requirement?**

    No.

74. Does SBA require documentation from other agencies if 7a refinances another agency debt?

Yes.

75. Would all SBA 7a loans be eligible loans to be refinanced with a 504 loan refi program? Or what would make an SBA 7a ineligible for the 504 loan refinancing program?

Not necessary. Only those that meet the Qualified Debt definition per Policy Notice 5000-808830.

76. What does the SBA consider a "good cause" for an exception? Can you give an example?

SBA would expect that an exception would be a rare occurrence. We do not have examples to provide as we haven't processed any exception requests previously for refinancing with expansion. We are uncertain why there will be a need to provide an exception for good cause for refinancing without expansion. However, SBA retained the flexibility to grant exceptions when justified and documented.

77. With the 7a, if we want to refi the same Institution 7a loan and it is NOT sold to an investor, is it not able to be refi'd unless they go to a different Bank?

It may be eligible for same institution debt refinance. Refer to same institution debt refi section of Policy Notice 5000-808830.

NADCO Clarification – refer to NADCO submitted Q&A #11 above for more information.

78. Is 7a required to get the CDC's permission before refinancing a 504 loan?

Please refer to SOP 50 10 6 - pg. 232, for the on refinancing 504 loans under the SBA's process under non-delegated to LGPC. The 7(a) lender needs to provide justification on refinancing the 504 loan.

79. Is there similar refinance flexibility with 7a program? e.g., Can we refinance a 504 with a 7a or a 7a with another 7a?

SOP 50 10 6 - pg. 232, process under non-delegated to LGPC. If the loan has not been sold in the secondary market, they should be able to modify its own 7a loan. With the exception of SBA Express loan.

80. Loans approved between 9/28/20 and 1/31/2021 (Section 1112) were not eligible for any payment forgiveness. Will they be eligible if refinanced before 9/30/2021?

No. Please also refer to Information Notices 5000-20041 and 5000-20079 which prohibits refinancing SBA loans for the purpose of making a loan that was ineligible for Section 1112 payments in an attempt to circumvent those restrictions in statute.

Refinancing Federally Guaranteed Loans for Agencies Other than SBA

81. 7a loans require a lender certification that they cannot modify the existing loan - are there similar requirements for USDA loan refinance?

Please contact your local USDA office and request the refinance requirements for their loan programs.