

inside the buffer zone within 2 kilometers of each other within a 30-day period, the NPPO of the Republic of Korea will immediately prohibit all registered pest-exclusionary structures within 2 kilometers of the finds from exporting tomatoes to the United States and notify APHIS of the action. The prohibition will remain in effect until the NPPO of the Republic of Korea and APHIS agree that the risk has been mitigated.

(3) Records of trap placement, trap servicing, and fruit fly captures for each pest-exclusionary structure must be kept for at least 1 year and trapping records provided to the NPPO of the Republic of Korea each month. The NPPO of the Republic of Korea must make the records available to APHIS for review upon request.

(c) *Packinghouse procedures.* The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered pest-exclusionary structures. A random sample of fruit per lot, as determined by the NPPO of the Republic of Korea and agreed to by APHIS, must be inspected for external pests and the fruit must be cut to reveal internal pests. Each sample must be of sufficient size in order to detect pest infestations. Any damaged, diseased, or infested fruit should be removed and separated from the commodity destined for export. The tomatoes must be safeguarded by an insect-proof mesh, screen, or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until the arrival of the tomatoes in the United States or the consignment will not be allowed to enter the United States.

(d) *Commercial consignments.* Tomatoes with stems from the Republic of Korea may be imported in commercial consignments only.

(e) *Phytosanitary certificate.* Each consignment of tomatoes must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of the Republic of Korea bearing the following additional declaration: "Tomatoes in this consignment were grown in pest-exclusionary structures in accordance with 7 CFR 319.56–52 and were inspected and found free from *Bactrocera depressa*, *Heliocoverpa armigera*, *Heliocoverpa assulta*,

*Mamestra brassicae*, *Ostrinia furnacalis*, *Scirtothrips dorsalis*, and *Thrips palmi*."

(Approved by the Office of Management and Budget under control number 0579–0371)

Done in Washington, DC, this 5th day of October 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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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:** Final rule.

**SUMMARY:** This rule finalizes the interim final rule that implemented section 1122 of the Small Business Jobs Act of 2010, which authorizes projects approved for financing under Title V of the Small Business Investment Act to include the refinancing of qualified debt. As a result of comments received, this final rule amends the interim final rule to authorize the financing of business expenses as part of a Refinancing Project, to allow the Third Party Loan to be at least as much as the 504 loan instead of requiring that the Third Party Loan provide at least 50% of the financing, and to revise the definition of qualified debt. Other aspects of the interim final rule are adopted as final without change.

**DATES:** *Effective Date:* This rule is effective October 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Andrew B. McConnell, Jr., Office of Financial Assistance, at [jobsact\\_debtrefinancing@sba.gov](mailto:jobsact_debtrefinancing@sba.gov) or 202–205–9949.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 17, 2011, SBA published an interim final rule with request for comments in the **Federal Register** to implement section 1122 of the Small Business Jobs Act of 2010 (Jobs Act). See 76 FR 9213. This provision of the Jobs Act temporarily authorizes projects approved for financing under Title V of the Small Business Investment Act to include the refinancing of qualified debt. 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, and is available for loan applications approved by SBA through September 27, 2012.

The interim final rule was effective February 17, 2011 and the comment period was open until May 18, 2011. SBA received written comments from 34 commenters, including 6 banks, 2 small businesses, 17 Certified Development Companies, 3 national trade associations, and 6 individuals. The comments are summarized and addressed below with, where applicable, the citation to the rule provision that has been changed after consideration of the comments.

## II. Summary of Comments Received

1. *Financing for Business Expenses—13 CFR 120.882(g)(6).* In the interim final rule, SBA requested comments from the public on whether, and how, to implement the provision in the Jobs Act that authorizes the financing of business expenses in the temporary debt refinance program. Twenty-five of the 34 comments received requested that SBA implement the authority to finance business expenses; none of the comments opposed implementing this authority. Several commenters stated that there is an urgent need for this financing due to the national recession which, they assert, resulted in bank regulator restrictions on lending institutions, limitations on lines of credit, and decreased opportunity for equipment vendor financing. Businesses could enhance their viability and growth potential if they were able to access the accumulated equity in their real estate and other fixed assets for business purposes. No suggestions were received on how to implement the business expense provision.

Based on the comments, SBA is amending the rule to allow a Borrower to request the financing of business expenses as part of its application for the Refinancing Project. Such financing will be available only if the amount of cash that will be provided as a result of the refinancing exceeds the amount to be paid to the lender of the Qualified Debt. The Borrower's application must include a specific description of the business expenses for which the financing is requested and an itemization of the amount of each expense. The funds provided for business expenses must be used solely for the business expenses of the Borrower, such as salaries, rent,

utilities, inventory, and other obligations of the business. The expenses may have been incurred, but not paid, prior to loan application or may be used to pay for expenses that will become due for payment within eighteen months after the date of loan application. Both the CDC and the Borrower will be required to certify in the application that the funds will be used to cover the business expenses of the Borrower. Borrower must be able, upon request, to substantiate the use of the funds provided for business expenses, through, for example, bank statements, invoices marked "paid", cleared checks, or any other documents that demonstrate that a business obligation was satisfied with the funds provided.

2. *Third Party Loan Less than 50%*—13 CFR 120.882(g)(5). The interim final rule requires that the Third Party Loan contribute not less than 50% of the Refinancing Project amount, the 504 loan contribute not more than 40% of the Refinancing Project amount, and the Borrower contribute not less than 10% of the Refinancing Project amount. However, while the typical 504 Project includes a Third Party Loan equal to 50% of the Project costs, the regulations for a 504 Project other than debt refinancing require only, with certain exceptions not applicable here, that the financing for the 504 Project include one or more Third Party Loans that total at least as much as the 504 loan. See 13 CFR 120.920(a). Sixteen comments were received requesting SBA to apply to a debt refinancing project the same loan structure requirement that applies to other 504 Projects, and not require the Third Party Loan to be 50% of the Refinancing Project. Commenters observed that the 50% contribution is not required by Section 1122 of the Jobs Act. SBA has considered these comments and concludes that it serves the interest of this temporary debt refinancing program to amend the interim final rule to make it consistent with 13 CFR 120.920(a), requiring that the Third Party Loan total at least as much as the 504 loan.

3. *Qualified Debt Criteria: Substantially all of loan proceeds used to acquire Eligible Fixed Asset*—13 CFR 120.882(g) (15) (Definition of Qualified Debt, subparagraph (iii)), and 13 CFR 120.882(e)(1). To qualify for refinancing, the Jobs Act requires, among other criteria, that the debt to be refinanced be a commercial loan "the proceeds of which were used to acquire an eligible fixed asset". See § 502(7)(C)(i)(III)(aa)(DD) of the Small Business Investment Act. In promulgating the interim final rule, SBA

was aware that the Borrower may have refinanced such a loan one or more times after the original financing and used available equity in the asset to finance working capital or other expenses. Consequently, SBA provided in the interim final rule that the commercial loan would meet this criteria if "substantially all (85% or more) of [the loan] was for the acquisition of Eligible Fixed Assets", see 13 CFR 120.882(g)(15); the remaining 15% of the proceeds must have been used for other purposes for the benefit of the Borrower. SBA stated in the preamble to the interim final rule that the Borrower would be required to certify that the existing debt satisfies these requirements, and that the Third Party Lender would be required to certify that it has no reason to believe that the existing debt does not satisfy these requirements. In addition, SBA stated in the preamble that SBA may require, on a random basis, for a borrower and/or lender to submit additional documentation supporting the "substantially all" assertion.

SBA received 19 comments expressing concern as to the ability of a small business to provide adequate documentation to support the "substantially all" standard. In particular, for loans involving more than one refinancing and lending institution, the commenters stated that it would be extremely difficult and burdensome to attempt to document the components of the existing debt. Consequently, SBA has reconsidered this criteria and is amending the interim final rule to recognize the economic reality that many loans for which borrowers will be seeking refinancing under the Jobs Act may have already been refinanced one or more times and that borrowers may have been able to borrow against the equity that was created in the Eligible Fixed Asset after its original financing. Accordingly, SBA is amending the rule to provide that, if the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the "substantially all" standard (the "original loan") and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy the "substantially all" standard. With respect to situations where the Borrower leased the property acquired with the original loan to one or more tenants, SBA recognizes that the original loan may not have satisfied the leasing policies set forth in 13 CFR 120.131 and 13 CFR 120.870(b), but that the Borrower would be able to

demonstrate that it satisfies SBA's leasing policies with respect to existing buildings as of the date of application for assistance under the Jobs Act. SBA believes that such Borrowers should be eligible for this assistance and is amending the rule to provide that, if the original loan was for the construction of a new building, or the acquisition, renovation, or reconstruction of an existing building, and such loan would not have satisfied the leasing policies set forth in 13 CFR 120.131 and 13 CFR 120.870(b), the current commercial loan will be eligible for assistance if the Borrower is able to demonstrate compliance with 13 CFR 120.131(b) for existing building as of the date of application for assistance under the Jobs Act.

SBA will require the Borrower to certify that the existing debt satisfies the applicable 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. As stated in the interim final rule, SBA may also still require, on a random basis, for a Borrower and/or lender to submit additional documentation to support the certifications prior to the closing on the 504 debenture, including the documents for the original loan with which the fixed asset was acquired and the subsequent refinancing documents to show that the current commercial loan is the most recent refinancing. SBA will cancel an approved loan if the documents do not support the certifications. If the Borrower and/or lender are unable to produce the additional documentation, each must certify that they have made a diligent search for the documents and that the documents are not in their possession. SBA will not cancel an approved loan based solely on the inability of the Borrower and/or lender to produce the documents, except that, if the lender is the original lending institution that made the loan for the Eligible Fixed Asset (not, for example, an institution that acquired or merged with the original lending institution), SBA would expect that this lender would be able to produce the necessary documents. To make the permanent debt refinancing program, which involves expansions, consistent with this temporary debt refinancing program, SBA is also amending 13 CFR 120.882(e)(1) to provide that if the acquisition of the 504-eligible asset was originally financed through a commercial loan that would have satisfied the "substantially all" standard and that was subsequently refinanced one or more times, with the

current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy the requirement of 120.882(e)(1).

4. *Qualified Debt Criteria: Current on all payments due*—13 CFR 120.882(g)(15) (Definition of Qualified Debt, subparagraph (vii)). One of the eligibility criteria for this refinancing program is that the Borrower has been current on all payments for not less than 1 year before the date of application. The interim final rule defines “current on all payments due” to mean that “no payment scheduled to be made during the one year period was either deferred or more than 30 days past due.” 13 CFR 120.882(g)(15) (definition of “qualified debt”). One trade association representing lenders that originate the vast majority of 504 transactions stated that SBA should allow considerable flexibility, and requested that SBA define “current” to mean that no payment was more than thirty days past due from the contractual requirement at the date of application, without regard to whether these requirements were original or modified payment terms. The commenter contended that this change would allow for cases where lenders worked with borrowers to temporarily modify loan terms to help them get through the recent economic slowdown, and reasoned that SBA will be able to use prudent underwriting to assess whether such modifications indicate whether or not borrowers are creditworthy. SBA agrees and is amending the definition of “current on all payments due” to allow a Borrower to be deemed current so long as, at any time within the 12 month period prior to the date of application, no payment was more than thirty days past due from either the original payment terms or modified payment terms (including deferments) if such modification was agreed to in writing by the Borrower and the lender of the existing debt prior to the publication date of these rules in the Federal Register. However, SBA reserves the right to determine, at its discretion on a loan-by-loan basis, whether modified repayment terms would preclude refinancing under this program.

5. *Total Project Cost Supported by Appraisal and Definition of Refinancing Project*—13 CFR 120.882(g)(5) and 120.882(g)(6). Twenty-eight comments were received expressing concern with respect to the basis upon which the amount of the refinancing is determined. Several commenters requested that SBA base the total project cost on the appraised value of the collateral even when it exceeds the amount of the existing debt, which will

allow borrowers to access the benefits of the 504 program, including the financing of business expenses, without increasing the risk to the agency.

Additional comments were received that the definition of “Refinancing Project” is too narrow and needs to be expanded in order to increase eligibility for small businesses. Other commenters requested that SBA remove the limitation on refinancing over-collateralized, high-equity value projects and allow such projects to be financed for borrowers who are otherwise locked out of credit markets. SBA believes that these comments are addressed by the changes made to the rule as indicated above in paragraphs 1 and 2, which, respectively, allow the Refinancing Project to include the financing of business expenses when supported by acceptable collateral, and remove the 50% Third Party Loan requirement.

6. *Decline in Real Estate Values*—One comment was received stating that the Jobs Act debt refinance program does not address the decline in appraised values or the potential of a commercial real estate crisis because assistance is based upon current fair market appraised value. Others made similar comments and requested that the total project cost be supported, but not defined, by the appraised value. These comments suggest that the amount of the Refinancing Project should be based on the existing outstanding principal balance of the Qualified Debt instead of on the value of the available collateral. SBA is not adopting this recommendation as the Small Business Jobs Act expressly provides that “the amount of the financing is not more than 90% of the value of the collateral for financing, \* \* \*” (Section 1122 (a)(C)(ii)(I)(italics added)).

7. *6-Month Closing Period Extensions*—The interim final rule requires that the 504 loan be disbursed within 6 months after loan approval, unless the Director, Office of Financial Assistance, or his designee approves a request for extension of the disbursement period for good cause. See 13 CFR 120.882(g)(12). Nine comments were received requesting that the Agency permit more time than 6 months for disbursement after loan approval, with some commenters stating that 9 months may be needed to prepare fully for closing. SBA believes that the commenters’ concerns are adequately addressed by the current authority to grant extensions based on good cause. To facilitate the Agency’s consideration of extension requests, the Director, Office of Financial Assistance, has delegated the authority to approve

extensions of the disbursement period up to an additional three months for good cause to the Center Director of the Sacramento Loan Processing Center.

8. *Allow Existing 504 Third Party Loan Financing*—Four comments were received in support of allowing existing 504 Third Party Loans to be eligible for this debt refinancing program. SBA is not adopting this recommendation as SBA continues to maintain the position, as stated in the preamble to the interim final rule, that these borrowers have already benefited from government assistance.

9. *Expand Eligibility to Notes Maturing After 12/31/2012*—The interim final rule requires that the existing debt mature on or before December 31, 2012 to be eligible for refinancing, 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. Two comments were received requesting that SBA extend program eligibility to borrowers whose notes mature in more than 24 months after 12/31/2012. On April 4, 2011, SBA published an announcement in the **Federal Register** that loans with any maturity date would be eligible for refinancing if they also meet the other statutory and regulatory requirements. See 76 FR 18375.

10. *Allow Liquid Assets as Collateral*—Three comments requested that SBA allow the Borrower to contribute additional collateral in the form of liquid assets. SBA has considered this comment and is not adopting it due to the relative volatility of the value of many other asset classes when compared with real estate or equipment.

11. *Allow Expansion Projects*—Two comments were received requesting that projects involving expansion be allowed as part of this temporary refinancing program, with one commenter specifically requesting that an expansion be allowed where it meets a public policy goal. However, the refinancing authority granted by the Jobs Act expressly provides that it applies to a project that does not involve the expansion of a small business concern. In addition, SBA already allows refinancing with lower fees than this program for projects involving expansion where the existing indebtedness is up to 50% of the project cost of the expansion. See 13 CFR 120.882(e). Moreover, with the publication of this rule, SBA is allowing for business expenses and obligations to be financed when supported by acceptable collateral so there is greater flexibility in what can now be financed.

12. *SBA Coordination With Bank Regulators*—Two comments were received that described the difficulties involved in making this debt refinancing program available for loans that the bank regulators may consider Troubled Assets. One of the commenters requested that SBA seek the cooperation of the bank regulators to grant an exception from the requirements involved for Troubled Assets. SBA is always willing to provide bank regulators with information about SBA's programs that may assist them in assessing the refinancing transaction and any effect on the lender and borrower.

13. *Thirty-Year Debenture*—One comment was received requesting that SBA consider a thirty year debenture to ease the debt service constraint in this type of environment. This would assist borrowers by lowering monthly payments which in turn helps cash flow and may allow more borrowers to qualify. This recommendation was not adopted due to the short-term nature of this program and would likely require a change in the subsidy cost modeling. It would also create a limited amount of 30 year securities which would make marketing the securities more difficult.

14. *Loan Loss Reserve for All CDCs*—One commenter provided a general comment about the 504 Loan Program and stated that all CDCs, not only PCLP CDCs, should be required to maintain a loan loss reserve to reimburse SBA for losses on 504 loans in order to discourage CDCs from making "bad loans." The commenter recognized that this change would require new statutory authority. SBA is reviewing this recommendation.

15. *Pool Eligible Real Estate Mortgages Loans*—One comment was received that SBA should allow for the pooling of all eligible real estate mortgages loans even if it is the same institution debt. Currently, Third Party lenders may sell up to 80% of their first mortgages to pool originators in SBA's First Mortgage Loan Pool Program. 13 CFR 120.1700–120.1726. SBA provides a 100% guarantee to investors that purchase the rights to this portion of the loan that have been pooled together as part of this program. Same institution refinanced first mortgages are not currently eligible under this temporary program. SBA is not adopting this recommendation due to concern that it would pose an unacceptable risk by allowing an institution an opportunity to avoid 80% of the risk in a transaction that was not entirely at arm's length. In addition, this option was not in SBA's original subsidy model and could require additional fees.

16. *Extending Legislation*—Twelve comments were received requesting that SBA request an extension of the temporary legislation for the Jobs Act due to the time needed for SBA to develop and implement this new program. SBA is not in a position at this time to determine whether to support an extension of this program.

Finally, SBA has concluded that posting the fees on the agency's Web site in lieu of establishing the specific fee in the regulations would be more advantageous and transparent to the public. As a result, SBA is amending 13 CFR Section 120.882(g)(4) to provide that the amount of the fee will be established by SBA each fiscal year and will be available on SBA's Web site at <http://www.sba.gov/content/504-loan-refinancing-program>.

### III. 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. The changes made by this rule benefit the public by expanding, rather than restricting, the opportunities for refinancing under this temporary debt refinancing program. Any delay in the effective date would deny small businesses immediate access to the full benefits of the credit made available through this rule, such as the financing of business expenses, 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

OMB has determined that this rule is a "significant" regulatory action under Executive Order 12866. In the interim final rule, SBA set forth its initial regulatory impact analysis, which addressed the following: The regulatory objective of the interim final rule; the baseline costs; the potential benefits and costs of the interim final rule to lenders,

to CDCs and Borrowers, and to SBA and the Federal Government; and alternatives to the interim final rule.

SBA did not receive any comments which specifically addressed its regulatory impact analysis. However, as discussed above, SBA received several comments requesting that SBA implement the authority to finance business expenses as part of a Refinancing Project. As indicated above, SBA is implementing this authority, which will provide additional benefit to small businesses. The cost differential for an application for assistance with this change is negligible.

In addition, SBA is modifying the cost estimates that were provided in the interim final rule based on a revised estimate of the number of refinance loans that SBA anticipates will be processed during the time remaining for this temporary program. This revised estimate is based on the actual volume of the program to date and the estimated volume of loan applications that will be processed based on the changes made by this Final Rule. SBA now anticipates that 8,520 refinance loans will be processed, of which an estimated 5,795, or 68% will be submitted by ASM (Abridged Submission Method) CDCs and an estimated 2,725, or 32%, will be submitted by non-ASM CDCs. 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 final rule would be 5,795 loan applications × 8.4 hours for an estimated cost of \$2,190,510. 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 \$45 per hour. Therefore, the annual costs of submitting 504 debt refinance applications under the final rule would be 2,725 loan applications × 8.7 hours for an estimated cost for non-ASM debt refinance applications of \$1,066,838. The total estimated costs for ASM and non-ASM applications combined would be \$3,257,348 for the two-year period of the Jobs Act.

In addition, 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 × 5,795 applications for an estimated cost of \$2,190,510 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  $\times$  2,725 for a total annual estimated cost of \$1,066,838 for non-ASM refinancing loan application. SBA estimates that its combined cost of reviewing ASM and non-ASM applications to be \$3,257,348 for the two year period of the Jobs Act.

In order to carry out this new program, SBA will hire up to 50 additional staff for the Sacramento Loan Processing Center. The Agency must also hire one full-time staff for lender oversight at an average cost of \$135,000 per year or a total of \$270,000 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 \$480,000.

For the reasons described above, SBA adopts as final the initial regulatory impact analysis set forth in the interim final rule as revised above.

#### *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, the interim final rule and the final rule were 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 comment e-mail address and solicited comments for a 30 day period. The interim final rule 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. In addition, as indicated above, SBA received written comments on the interim final rule from 34 entities, including 6 banks, 2 small businesses, 17 Certified Development Companies, 3 national trade associations, and 6 private citizens, and the changes made by this final rule reflect the concerns expressed by these commenters.

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 is adopting a new procedure with this rule that specifically addresses concerns that were raised in public comments regarding the burden that was imposed on lenders and borrowers by requiring them to document, on a random basis, that substantially all of the proceeds of the current 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 response to these comments, the final rule provides that, if the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the "substantially all" standard and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current loan will be deemed to satisfy the "substantially all" standard. (This final rule also applies this change to the permanent refinance program authorized by 13 CFR 120.882(e)). Borrowers and lenders will still be required to certify that the debt to be refinanced meets the applicable requirements and, SBA may still require, on a random basis, that Borrowers and/or lenders submit additional documentation to support the certifications. However, in response to the comments, SBA has determined that, if the Borrower and/or lender are unable to produce the additional documentation, SBA will allow them each to certify that they have made a diligent search for the documents and that the documents are not in their possession. SBA will not, as indicated above, deny an application based on the

inability of the Borrower and/or lender to produce the documents, except that, if the lender is the original lending institution that made the loan to acquire the Eligible Fixed Asset (not, for example, an institution that acquired or merged with the original lending institution), SBA would expect that this lender would be able to produce the necessary documents.

#### *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*

The Regulatory Flexibility Act (RFA) requires administrative agencies to consider the economic impact of their actions on small entities, including small non-profit businesses and small local governments. Pursuant to the RFA, in finalizing a rule, whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in 5 U.S.C. 603(a), the agency shall prepare a final regulatory flexibility analysis. (See, 5 U.S.C. 604(a)). As discussed in the interim final rule, SBA has determined that there was good cause to publish this rule without notice and comment rulemaking under section 553. In addition, this rule is not an interpretive rule involving the internal revenue code. This rule is, therefore, exempt from the requirements of the RFA.

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

Community development, Loan programs—business, Loan programs—veterans, Reporting and recordkeeping requirements, Small businesses, Veterans.

Accordingly, the interim final rule amending 13 CFR Part 120 which was published at 76 FR 9218 on February 17, 2011, is adopted as a final rule with the following changes:

#### **PART 120—BUSINESS LOANS**

■ 1. The authority citation for 13 CFR part 120 continues 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 § 120.882 by revising paragraphs (e)(1), (g)(4), (g)(5), (g)(6), and paragraphs (iii) and (vii) in the

definition of “Qualified debt” in paragraph (g)(15), 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. If the acquisition, construction or purchase of the asset was originally financed through a commercial loan that would have satisfied the “substantially all” requirement and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy this paragraph (e)(1).

\* \* \* \* \*

(g) \* \* \*

(4) In addition to the annual guarantee fee assessed under § 120.971(d)(2), Borrower must pay SBA a supplemental annual guarantee fee to cover the additional cost attributable to the refinancing in an amount established by SBA each fiscal year.

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

(6)(i) The portion of the Refinancing Project provided by the 504 loan and the Third Party Loan may be no more than 90% of the fair market value of the fixed assets that will serve as collateral;

(ii) The Borrower’s application may include a request to finance eligible business expenses as part of the Refinancing Project if the amount of cash funds that will be provided for the Refinancing Project exceeds the amount to be paid to the lender of the Qualified Debt. The Borrower’s application must include a specific description of the business expenses for which the financing is requested and an itemization of the amount of each expense. For the purposes of this

paragraph (b), “eligible business expenses” means the business expenses of the Borrower, such as salaries, rent, utilities, inventory, or other obligations of the business, that were incurred but not paid prior to the date of application or that will become due for payment within eighteen months after the date of application. Both the CDC and the Borrower must certify in the application that the funds will be used to cover eligible business expenses. Borrower must, upon request, substantiate the use of the funds provided for business expenses through, for example, bank statements, invoices marked “paid,” cleared checks, or any other documents that demonstrate that a business obligation was satisfied with the funds provided.

\* \* \* \* \*

(15) \* \* \*

*Qualified debt* \* \* \*

(iii) Substantially all (85% or more) of which was for an Eligible Fixed Asset. If the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the “substantially all” standard (the “original loan”) and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy this paragraph (iii). If the original loan was for the construction of a new building, or the acquisition, renovation, or reconstruction of an existing building, and such loan would not have satisfied the leasing policies set forth in 13 CFR 120.131 and 13 CFR 120.870(b), the current commercial loan will be deemed to satisfy these policies, provided that Borrower demonstrates compliance with 13 CFR 120.131(b) for existing buildings as of the date of application.

\* \* \* \* \*

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

and before debenture funding must be reported to SBA as an adverse change.

\* \* \* \* \*

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

[FR Doc. 2011–26311 Filed 10–7–11; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA–2011–0568; Directorate Identifier 2011–NM–010–AD; Amendment 39–16824; AD 2011–21–01]**

**RIN 2120–AA64**

**Airworthiness Directives; Fokker Services B.V. Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 Airplanes; and Model F.28 Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F27 and F28 type designs in response to these regulations revealed that, under certain failure conditions, a short circuit can develop in the fuel pilot valve solenoid or in the wiring to the solenoid. Such a short circuit may result in an ignition source in the wing tank vapour space.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

\* \* \* \* \*

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 16, 2011.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the