Schedule Obligation to the FFB; Form 614, Confirmation Schedule—Long-term Obligation to RUS; or, Confirmation Schedule for RTB Debt);

(b) Confirmed other long-term debt directly with the lender;

(c) Examined notes executed or cancelled during the audit period; and

(d) Tested accrued interest computations.

§ 1773.45 Regulatory liabilities.

The auditor's audit documentation shall support that all regulatory liabilities comply with the requirements of ASC 980. For electric auditees only, the auditor's audit documentation shall document whether all regulatory liabilities have received RUS approval.

§§ 1773.46–1773.48 [Reserved]

§ 1773.49 OMB Control Number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned the OMB Control Number 0572–0095.

Date: April 30, 2018.

Kenneth L. Johnson,

Administrator, Rural Utilities Service.

[FR Doc. 2018–09501 Filed 5–4–18; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AG79

Debt Refinancing in 504 Loan Program

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule finalizes the interim final rule (IFR) that was published on May 25, 2016, to implement the debt refinancing program reauthorized by Section 521 of Division E of the Consolidated Appropriations Act, 2016. In response to comments received on the IFR, this final rule makes some additional revisions to the program's regulations with respect to the definition of Qualified debt, the requirements related to Eligible Business Expenses, the refinancing of Projects involving single or limited use properties, and the disbursement period.

DATES: This rule is effective June 6, 2018.

FOR FURTHER INFORMATION CONTACT: Linda Reilly, 504 Program Chief at *linda.reilly@sba.gov* or 202–205–9949.

SUPPLEMENTARY INFORMATION:

I. Background Information

The 504 Loan Program is an SBA financing program authorized under Title V of the Small Business Investment Act of 1958 (the ''SBIAct''), 15 U.S.C. 695 *et seq.* The core mission of the 504 Loan Program is to provide long-term financing to small businesses for the purchase or improvement of land, buildings, and major equipment, in an effort to facilitate the creation or retention of jobs and local economic development. Under the 504 Loan Program, loans are made to small business applicants by Certified Development Companies (''CDCs''), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (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 (a ''504 Loan'') 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 (the ''Jobs Act''), Public Law 111–240, 124 Stat. 2504, enacted on September 27, 2010, temporarily expanded the ability of a small business to use the 504 Loan Program to refinance certain qualifying debt. Prior to the Jobs Act, a 504 Project could include a refinancing component only if the project involved an expansion of the small business and the existing indebtedness did not exceed 50% of the project cost of the expansion. *See* 13 CFR 120.882(e). The temporary Jobs Act program authorized the use of the 504 Loan Program for the refinancing of debt where there is no expansion of the small business concern (the ''Debt Refinancing Program''). That program expired on September 27, 2012.

Section 521 of Division E of the Consolidated Appropriations Act, 2016 (the ''2016 Act''), Public Law 114–113, enacted on December 22, 2015, reauthorized the Debt Refinancing Program with three modifications:

(1) The Debt Refinancing Program shall be in effect only in those fiscal years during which the cost to the Federal Government of making guarantees under the Debt Refinancing Program and under the 504 Loan Program is zero;

(2) A CDC is required to limit its financings under the 504 Loan Program so that, during any fiscal year, new financings under the Debt Refinancing Program do not exceed 50% of the dollars the CDC loaned under the 504 Loan Program during the previous fiscal year. The 2016 Act provides that this limitation may be waived by SBA upon application by a CDC and after determining that the refinance loan is needed for good cause; and

(3) The alternate job retention goal authorized by the Jobs Act for the Debt Refinancing Program is eliminated.

On May 25, 2016, SBA published an interim final rule to implement the 2016 Act (81 FR 33123) and, with the ''zero cost'' requirement satisfied for fiscal year 2016, SBA began accepting applications for assistance under the Debt Refinancing Program on June 25, 2016, the effective date of the interim final rule. With the ''zero cost'' requirement satisfied for fiscal years 2017 and 2018, the Debt Refinancing Program has continued to be in effect without interruption. The regulations governing this program are found at 13 CFR 120.882(g).

II. Summary of Comments Received

SBA received 49 comments during the comment period for the interim final rule, which closed on July 25, 2016. Of the comments received, 44, or 90%, were from Certified Development Companies, one was from a trade association, one was from a law firm, one was from a commercial real estate broker, one was from a financial institution, and one was from a private citizen. Below is a summary of the comments received.

A. Definition of Qualified Debt—Section 120.882(g)(15)

The Jobs Act authorizes the refinancing of ''Qualified Debt'' which is defined to mean, among other factors, ''indebtedness'' that ''was incurred not less than 2 years before the date of the application for assistance'', that ''is a commercial loan'', and the proceeds of which were used to acquire an Eligible Fixed Asset. *See* section 502(7)(C)(III)(aa)(AA), (BB), and (DD) of the SBIAct. In imposing the two-year requirement, Congress clearly did not want the Debt Refinancing Program to apply to new loans (*i.e.,* loans less than two years old). In implementing this statutory requirement, the current regulations define ''Qualified debt'', in part, as a ''commercial loan . . . [t]hat was incurred not less than 2 years before the date of the application for the refinancing available under [the 504 Debt Refinancing Program]''. *See* 13 CFR 120.882(g)(15) (definition of ''Qualified debt''). Debt that was refinanced through the execution of a new Note within the two year period would not be considered Qualified debt under the current regulations.

Twenty-nine commenters requested that the definition of Qualified debt be revised to include debt that has been refinanced within the 2 years prior to the date of the 504 Debt Refinancing application. The commenters argue that, as long as the debt being refinanced was originally incurred more than 2 years before application, it falls under the statutory definition. Some of the commenters also contend that the term ''indebtedness'' is broader than the term ''commercial loan'', and that SBA should look to the date of the ''original'' indebtedness and not the date that the loan was refinanced. One commenter suggested that a refinancing within two years of the application date that extends the date of the balloon payment should be allowed if the borrower did not receive any additional funds with the new loan.

SBA has reconsidered this issue and agrees that it is appropriate to consider the substance of the refinancing, rather than the form (*i.e.,* whether the most recent debt is evidenced by a new Note), to determine whether it is the same ''indebtedness'' as the prior loan. SBA has concluded that certain loans that are refinanced within two years of the date of application (the resulting loan herein referred to as the ''most recent loan'') may qualify as the same indebtedness, but only if the most recent loan is, in effect, a replacement for the prior loan. Specifically, in order to be considered the same indebtedness, the most recent loan cannot have advanced any additional funds to the Borrower (other than to pay the closing costs of the refinancing). SBA is revising the definition of ''Qualified debt'' to reflect that SBA will consider the most recent loan to be the same indebtedness as the prior loan if the effect of the most recent loan was to extend the prior loan's maturity date without advancing any additional proceeds to the Borrower. The collateral for the most recent loan must also include, at a minimum, the same Eligible Fixed Asset(s) that served as collateral for the prior loan that was refinanced. (Other terms of the most recent loan, however, such as interest rate or amortization schedule, may be different and may also include the addition of other eligible collateral.) In order to ensure that the Debt Refinancing Program complies with the statutory prohibition against refinancing new indebtedness, CDCs must submit to SBA as part of the application copies of the most recent loan and lien instruments, as well as copies of the loan and lien instruments for the loan that was replaced by the most recent loan, to show that the effect of the most recent loan was to extend the prior loan's maturity date without advancing any additional funds to the Borrower (other than to pay the closing costs of the refinancing).

In addition, SBA received comments relating to the statutory requirement that the applicant be current on all payments due for not less than one year preceding the date of application. *See* section 502(7)(C)(III)(bb) of the SBIAct. The current regulations define ''current on all payments due'' to mean 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 no less than one year preceding the date of application.'' See 13 CFR 120.882(g)(15) (definition of ''Qualified debt'', ¶ (vii)). In the Interim Final Rule published on May 25, 2016, SBA explained that it established the requirement that the modification be executed no less than one year preceding the 504 application because a debt should not be considered ''current on all payments due for not less than one year preceding the date of application'' if the payment terms were modified during the one year period. This requirement was imposed, in part, to ensure that the Debt Refinancing Program would not be used to refinance loans that had been modified for the sole purpose of avoiding a delinquency or default within the prior year.

Some commenters requested that SBA allow a modification (including through a renewal or extension) within the one year period when the purpose of the modification is to extend a balloon payment. SBA has reconsidered this issue and agrees that modifications that extend the maturity date of the loan may be allowed, provided that, during the one year period prior to the date of application (*i.e.,* in the months prior to and after the modification), the applicant is current on all payments due, there have been no deferments of any payments, and no additional proceeds were advanced through the modification. To conform the current regulation to this revision, SBA is removing the reference to deferments from the regulatory text.

In addition, as SBA is now allowing certain refinanced loans to satisfy the 2-year indebtedness requirement described in ¶ II.A. above, these refinanced loans should not be excluded from the definition of ''current on all payments due for not less than one year preceding the date of application'' merely because the refinance occurred within the year prior to application. Thus, SBA will allow a refinanced loan to satisfy the ''current on all payments due'' requirement provided that it satisfies the same requirements as a modified loan, including that, during the one year period prior to the date of application (*i.e.,* in the months prior to and after the refinancing), the applicant was current on all payments due, there were no deferments of any payments, and no additional proceeds were advanced through the refinancing (other than to pay the closing costs of the refinancing). (To be consistent with the change to the ''Qualified debt'' definition regarding when the indebtedness is incurred, the modified or refinanced loan may also change the interest rate and other terms.)

SBA emphasizes that it expressly reserves the right to determine, at its discretion on a loan-by-loan basis, whether the modified or refinanced repayment terms fail to satisfy prudent lending standards.

B. Refinancing Projects Involving Limited or Single Purpose Properties—13 CFR 120.882(g)(5)

Concerns were expressed by 24 commenters about requiring Borrowers to contribute 15%, instead of 10%, for the refinancing of projects involving limited/single purpose properties. The commenters noted that, under the temporary Debt Refinancing Program, SBA required such Borrowers to make only a 10% contribution but, when SBA began to process applications under the reauthorized Debt Refinancing Program, SBA required Borrowers to contribute 15%. SBA notes that the temporary Debt Refinancing Program was implemented during very different economic conditions, when the projects to be refinanced under this program were sometimes significantly under-collateralized. By requiring Borrowers to contribute only 10% and not 15% for refinancing projects involving limited or single purpose properties, SBA made the program more available to Borrowers at a time when it was difficult for small businesses to access capital. Because the project was for the refinancing of an existing debt, and was not for the acquisition, construction, conversion, or expansion of a limited or single purpose property, SBA concluded that the 15% contribution was not required under statutory or regulatory requirements. *See* section 502(3)(C)(ii) and 13 CFR 120.910(a)(2). Due to the critical need to provide small businesses with access to capital during that time, SBA was willing to absorb the additional risk posed by debt refinancing projects where the

underlying collateral was limited or single purpose properties.

However, when SBA implemented the 2016 Act, SBA reconsidered this policy in light of the fact that, with the economic recovery, project properties are now typically over-collateralized and can readily provide the additional 5% equity and often more, thereby mitigating the risk presented to SBA by projects involving single or limited purpose properties in the event of liquidation. The 2016 Act states that the Debt Refinancing Program may provide ''not more than 90% of the value of the collateral'' for the refinancing of the Qualified Debt, and SBA has determined that, where the underlying collateral is limited or single purpose properties, the financing provided through the Debt Refinancing Program will be limited to 85% of the collateral value, with 15% being contributed by the Borrower.

In the event that general market conditions result again in 504 Projects that are significantly under-collateralized, however, SBA wants the Debt Refinancing Program to have the flexibility to allow Borrowers to contribute only 10% toward the cost of a project involving single or limited use properties. Accordingly, the rule will provide that, if the Refinancing Project involves a limited or single purpose building or structure, the Borrower must contribute not less than 15%; *provided, however,* that SBA may determine, in its discretion, that in the event of an economic recession, as determined by the National Bureau of Economic Research or its equivalent, the required Borrower contribution may be not less than 10% for such projects. In such circumstance, SBA will publish a notice in the **Federal Register** of its determination and setting forth the justification for the lower required Borrower contribution. This lower Borrower contribution requirement would be in effect until the first day of the calendar quarter after the economic recession has ended as determined by the National Bureau of Economic Research or its equivalent. SBA will publish a notice in the **Federal Register** to announce that the lower required Borrower contribution ceased being in effect as of that date.

With respect to the loan provided by the Third Party Lender, the statute requires the Third Party Lender to contribute 50% to the project cost when the project is financing the construction (or acquisition, conversion or expansion) of a single or limited purpose property. *See* section 502(3)(B)(ii) of the SBIAct. While this statutory requirement does not strictly apply to the refinancing of existing debt involving single/limited purpose property, SBA has considered whether Third Party Lenders should nevertheless be required to contribute 50% in the case of refinancing a debt involving such properties. As Borrowers are now often able in the current market to contribute 20% or more equity to the Refinancing Project's costs, the 504 loan would amount to 30% or less of the project cost if the Third Party Lender were required to contribute 50%, which does not maximize the economic benefit of the 504 Loan Program to the small business. Thus, SBA has determined that Third Party Lenders will not be required to contribute 50% but, as required for all projects financed under the Debt Refinancing Program, their participation must be at least equal to the SBA 504 loan.

C. Extension of Disbursement Deadline—13 CFR 120.882(g)(12)

The current rule requires that the 504 loan proceeds be disbursed within 6 months after loan approval, and authorizes the Director, Office of Financial Assistance, or his or her designee, to approve any request for extension of the disbursement period for good cause. 13 CFR 120.882(g)(12). A commenter stated that, now that the program is permanent, the rule should be revised to allow up to one year for disbursement. The commenter observed that six months may not be sufficient time to, for example, satisfy certain environmental requirements. SBA has considered this comment and agrees to change the disbursement period to nine months, and to provide the Director, Office of Financial Assistance (D/FA), or his or her designee, with the authority to approve any request for extension of the disbursement period for not more than an additional six months for good cause. SBA finds that this increase, along with the limited authority to approve any request for extension for good cause, is sufficient to address the commenter's concerns. SBA is revising 13 CFR 120.882(g)(12) accordingly.

D. Financing of Eligible Business Expenses—13 CFR 120.882(g)(6)(i) and (ii)

1. Loan-to-Value Limitations With Financing of Eligible Business Expenses

Under the Debt Refinancing Program, Borrowers may 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. See 13 CFR 120.882(g)(6)(ii).

When SBA first implemented the reauthorized Debt Refinancing Program in 2016, SBA applied a maximum 75% loan-to-value (LTV) for any project that financed business expenses and limited such financing of business expenses to no more than 25% of the value of the Eligible Fixed Asset(s) securing the Qualified Debt. *See* Policy Notice 5000–1382, effective May 26, 2016. Thirty-six commenters expressed concerns that the 75% LTV was severely restrictive and would impair utilization of the program, and many urged SBA to allow for a 90% LTV for all Refinancing Projects. SBA considered these comments and decided to revise 13 CFR 120.882(g)(6)(i) to allow a maximum LTV of 85% for any project that includes the financing of Eligible Business Expenses. SBA concludes that this higher LTV will provide increased access to credit without adding undue risk to SBA.

In addition, most of the commenters expressed support for the 25% limitation on the amount that may be financed for business expenses, though SBA did receive at least one comment suggesting that the small business should determine the percentage of these expenses that may be financed. SBA notes that the financing of business expenses during Fiscal Year 2017 averaged less than 15% of the value of the Eligible Fixed Asset(s) securing the Qualified Debt. In addition, with the statutory requirement that SBA maintain the Debt Refinancing Program at zero subsidy in order for the program to be in effect during any fiscal year, SBA must be diligent in placing prudent controls on the program to mitigate SBA's risk and exposure. Accordingly, SBA has decided to limit the portion of the financing that may be for business expenses to 20% of the value of the Eligible Fixed Asset(s). In addition, if the Refinancing Project includes the financing of Eligible Business Expenses, SBA will not accept as collateral any fixed assets other than the Eligible Fixed Asset(s) securing the Qualified Debt. Accordingly, SBA is revising 13 CFR 120.882(g)(6)(i) and (ii) and the definition of ''Refinancing Project'' in 13 CFR 120.882(g)(15).

2. Eligible Business Expenses May Include Non-Capital Expenditures

Twenty-eight commenters requested that SBA allow Borrowers to finance minor renovations or ''non-substantial modifications or improvements to the Eligible Fixed Assets'' as an Eligible Business Expense under the Debt Refinancing Program. Enacted by Congress in 2010, the Jobs Act created the temporary Debt Refinancing Program for projects that do *not* involve

the expansion of a small business. *See* section 502(7)(C)(ii) of the SBIAct. SBA has concluded that the regulations would benefit from greater clarity regarding the type of minor renovations or ''non-substantial modifications or improvements'' that SBA regards as not involving the expansion of the small business.

SBA believes that a reasonable approach to this issue is to permit the financing of business expenses in the program as long as the expenses may be deducted as ordinary and necessary expenses on the small business's federal tax returns during the taxable year in which they were paid or incurred. *See* Internal Revenue Code, section 162. Examples of such expenses may include repairs, maintenance and minor improvements or renovations. Capital expenditures, on the other hand, would not be eligible for financing in the program because they have a useful life substantially beyond the taxable year. *See* Internal Revenue Code, section 263(a). Examples of such capital expenses may include the acquisition of land or improvements or betterments made to increase the value of any property. SBA believes that using this distinction between operating and capital expenditures is consistent with the statutory requirement that the Debt Refinancing Program be used for Refinancing Projects that do not involve the expansion of a small business.

Accordingly, SBA is revising the definition of Eligible Business Expenses to allow the financing of ''any other expenses of the business that are not capital expenditures.'' With the addition of this category, SBA is clarifying that the Borrower may finance any operating expense that it records and deducts as an expense in the taxable year in which it was paid or incurred, but may not finance any capital expense that is used to acquire or improve assets and which the Borrower may not claim as a deduction in the taxable year in which the expense was paid or incurred. SBA will rely upon the CDC and the small business to represent the nature of the expense and that the expense may be deducted as an ordinary and necessary expense during the taxable year in which it was paid or incurred. CDCs must document their determination regarding the nature of the expense in the credit memorandum.

SBA is also removing the phrase ''or other obligations of the business'' from the definition to clarify that, except as described below, other debt of the business is not included as an Eligible Business Expense. As SBA recently clarified, credit card debt may be included as an Eligible Business Expense if the credit card is issued in the name of the Applicant small business and the Applicant certifies that the credit card debt being refinanced was incurred exclusively for business related purposes. *See* SOP 50 10 5(J), Subpart C, Chapter 2, ¶ IV.E.3.g). SBA has also determined that business lines of credit may be included as an Eligible Business Expense if the business line of credit satisfies the same requirements as credit card debt. For debt that was incurred with a credit card or a business line of credit, the proceeds of the debt being refinanced, like all other business expenses financed under the Debt Refinancing Program, must have been used for expenses of the business that are not capital expenditures.

E. Waiver of the 50% Limitation—13 CFR 120.882(g)(10)

The 2016 Act requires that a CDC limit its financings under the 504 Loan Program so that, during any fiscal year, new financings under the Debt Refinancing Program do not exceed 50% of the dollars the CDC loaned under the 504 Loan Program during the previous fiscal year. The 2016 Act also provides that this limitation may be waived upon application by a CDC and upon SBA's determination that the refinance loan is needed for good cause. In the interim final rule, SBA stated that it would provide guidance regarding the good cause determination in its Standard Operating Procedures or other guidance documents. SBA received many comments suggesting various factors for SBA to consider in making the good cause determination, including projects that (i) assist manufacturing firms, (ii) will employ 1 full time equivalent job for every $100,000 in requested assistance, (iii) include the participation of another economic development entity, (iv) involve a borrower who has a pre-existing relationship with the CDC, or (v) involve a CDC with less than $5 million in 504 loans during the prior fiscal year. Some commenters also expressed concerns that the 50% limitation is disadvantageous to smaller or rural CDCs that may not have the same capacity as larger CDCs to finance these projects.

SBA considered these comments and concludes that the focus of the good cause determination should be only on the Borrower's financing needs, and not on the circumstances of the CDCs or other factors. Accordingly, as reflected in the recently issued SOP 50 10 5(J), Subpart C, Chapter 2, § IV.E.2, SBA will consider the following factors in determining whether there is good cause for the Borrower to obtain the refinancing through a CDC that exceeds the 50% requirement: (1) Whether the Borrower has access to other sources of financing, including other CDCs that have not exceeded their 50% cap; and (2) whether the CDC has an existing 504 loan with the Borrower that is in current status. No change to the regulation is necessary.

F. Statutory Requirements

Several commenters requested changes to other program requirements in the Debt Refinancing Program, including that SBA: (i) Allow 504 or 7(a) loans to be refinanced in the Debt Refinancing Program, (ii) allow CDCs participating in the Premier Certified Lenders Program (PCLP) to use their delegated authority to approve loans made in the Debt Refinancing Program, and (iii) reinstate the alternative job retention goal provided in the Jobs Act for Borrowers that do not meet the job creation and retention goals under sections 501(d) and (e) of the Small Business Investment SBIAct.

However, each of these program requirements is mandated by statute: the prohibition against refinancing a loan subject to a guarantee by a Federal agency is mandated by section 502(7)(C)(i)(III)(aa)(CC) of the SBIAct; the prohibition against PCLP CDCs using their delegated authority to approve loans made in the Debt Refinancing Program is mandated by section 502(7)(C)(v) of the SBIAct; and the elimination of the alternative job retention goal was made by section 521(a)(1) of the 2016 Act. SBA notes that, with the elimination of the alternate job retention goal, all applicants for a loan under the Debt Refinancing Program are required to meet the job creation and retention goals under section 501(d) and (e) of the SBIAct. Based on these goals, a 504 Project, including a project financed under the Debt Refinancing Program, must achieve one of the economic development objectives set forth in 13 CFR 120.861 or 120.862.

Accordingly, SBA cannot adopt the requested changes.

III. Section-by-Section Analysis

Except as set forth below, 13 CFR 120.882(g) remains unchanged.

Section 120.882(g) Introductory Text. In the Interim Final Rule, SBA revised the introductory text in this section to remove the following phrase that is no longer applicable: ''For applications received on or after February 17, 2011 and approved by SBA no later than September 27, 2012''. Also, with the permanent reauthorization of the Debt Refinancing Program by the 2016 Act, a specific application period is

unnecessary. No comments were received on this provision and no further changes are being made.

Section 120.882(g)(3). In the Interim Final Rule, SBA revised this section by removing the maturity date requirement. In its place, SBA inserted the 2016 Act's requirement that, for the Debt Refinancing Program to be in effect during any fiscal year, the cost to the Federal government of making guarantees under the Debt Refinancing Program and under the 504 Loan Program must be zero. No comments were received on this provision and no further changes are being made.

Section 120.882(g)(5). This paragraph is being revised to provide that, if the Refinancing Project involves a limited or single purpose building or structure, the Borrower must contribute not less than 15%. However, SBA may determine, in its discretion, that in the event of an economic recession as determined by the National Bureau of Economic Research or its equivalent, the required Borrower contribution may be not less than 10% for such projects. This lower Borrower contribution requirement may be in effect until the recession ends as determined by the National Bureau of Economic Research or its equivalent. As explained above, SBA will publish a notice in the **Federal Register** to announce the lower Borrower contribution requirement and explaining its justification, and a notice to announce that, due to the end of the recession, the lower Borrower contribution requirement is no longer in effect.

Section 120.882(g)(6). As discussed above, SBA is revising § 120.882(g)(6)(i) to allow a maximum LTV of 85% for any project that includes the financing of Eligible Business Expenses, and to limit the portion of the financing that may be used for Eligible Business Expenses to 20% of the value of the Eligible Fixed Asset(s). SBA is also revising § 120.882(g)(6)(ii) to amend the definition of Eligible Business Expenses to include ''any other expenses of the business that are not capital expenditures'', and to remove the phrase ''other obligations of the business'' from the definition to clarify that Eligible Business Expense may include credit card debt and business lines of credit in the name of the small business that were incurred exclusively for business related purposes, but no other debt of the business may be included.

Section 120.882(g)(10). As discussed above, the 2016 Act eliminated the alternate job retention goal and, accordingly, SBA removed the alternate job retention goal provision from the regulations in the Interim Final Rule.

Instead, the Interim Final Rule revised § 120.882(g)(10) to reflect the 2016 Act's requirement that a CDC limit its financings under the Debt Refinancing Program so that, during any fiscal year (October 1 to September 30), new financings under the Debt Refinancing Program do not exceed 50% of the dollars loaned by the CDC under the 504 Loan Program during the previous fiscal year. Because the 2016 Act provides that the 50% limitation applies to the dollars loaned under the 504 Loan Program during the previous fiscal year, all financings made by the CDC during the previous fiscal year will be included in determining this number, including those financings made under the Debt Refinancing Program.

The Interim Final Rule provided that, as authorized by the 2016 Act, the 50% limitation may be waived upon application by a CDC and a determination by SBA that the refinance loan is needed for good cause. As discussed above, SBA received comments on this provision and SBA has issued waiver guidance in the recently issued Standard Operating Procedure 50 10 5(J). SBA will monitor the implementation of this guidance and update it as needed in its policy guidance. For clarity, SBA is changing the term ''refinance loan'' to ''504 loan'' in the last sentence of section 120.882(g)((10). No further changes are being made to the regulation.

Section 120.882(g)(12). As discussed above, this paragraph is being revised to change the period by which a loan must be disbursed from six months to nine months. The Director, Office of Financial Assistance (D/FA), or his or her designee, will have the authority to approve any request for extension of the disbursement period for not more than an additional six months for good cause.

Section 120.882(g)(13). This section prohibits the Third Party Loan from being sold on the secondary market as a part of a pool guaranteed under subpart J of part 120 when the debt being refinanced is same institution debt. Subpart J of part 120, the Secondary Market Guarantee Program for First Lien Position 504 Loan Pools, expired on September 23, 2012; however, should this program be reauthorized, SBA wants to ensure that this prohibition remains in effect. Accordingly, in the Interim Final Rule, SBA revised this provision to make it clear that the prohibition would apply to any successor to the program described in subpart J of part 120. No comments were received on this provision and no further changes are being made.

Section 120.882(g)(15) (Definition of ''Qualified debt''). As discussed above, SBA is revising the criterion in paragraph (i) to allow certain loans that are refinanced within the two years prior to the date of application to be eligible as the same ''indebtedness'' if the effect of the refinancing was to extend the maturity date without advancing any additional proceeds, and the collateral for the most recent loan includes, at a minimum, the same Eligible Fixed Asset(s) that served as collateral for the former loan that was refinanced. Other terms of the most recent loan, such as interest rate and the addition of other collateral, may be different. To be considered for eligibility by SBA, the loan documents and lien instruments for the most recent loan, as well as the loan documents and lien instruments for the loan that was replaced by the most recent loan, must be submitted to SBA as part of the application.

SBA is also revising the definition of ''current on all payments due'' in paragraph (vii) to allow the payment terms of a loan to be modified less than one year prior to the date of application (whether through a modification to an existing Note or a refinancing that results in a new Note) if the purpose of the modification or refinancing is to extend the maturity date of the loan, including balloon payments, no additional proceeds were advanced to the Borrower, and the Borrower was current on all payments due for the one year period prior to the date of application (*i.e.,* in the months prior to and after the effective date of the modification or refinancing), including that there were no deferments of any payment.

SBA emphasizes that it reserves the right to determine, at its discretion on a loan-by-loan basis, whether the terms of any modification or refinancing are consistent with prudent lending standards.

Section 120.882(g)(15) (Definition of ''Refinancing Project''). SBA is revising this definition to provide that, if the Refinancing Project includes the financing of Eligible Business Expenses, SBA will not accept as collateral any fixed assets other than the Eligible Fixed Asset(s) securing the Qualified debt.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, 13771, 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 does not constitute a ''significant regulatory action'' under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

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

The Consolidated Appropriations Act, 2016, reauthorized the Debt Refinancing Program, which was first authorized by the Jobs Act. The Agency received significant public comments on the Jobs Act interim final rule that was issued to implement the temporary Debt Refinancing Program (*see* 76 FR 9213, February 17, 2011). To assist in developing that interim final rule, the Agency held a public forum on November 17, 2010 in Boston, Massachusetts. As discussed above, SBA received a significant number of public comments on the interim final rule that was published to implement the reauthorized Debt Refinancing Program, and the revisions made by this final rule are the result of the public participation in the rulemaking process.

Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because it is not significant under E.O. 12866.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act, 5 U.S.C. 601–612

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. This rule finalizes the interim final rule that was published in 2016 to implement the reauthorized Debt Refinancing Program. In issuing that rule, SBA provided just cause why it could be published without notice and comment, and therefore, exempted from the RFA requirement to prepare an initial regulatory flexibility analysis. Since this final rule merely finalizes that exempted interim rule, SBA believes a final regulatory analysis is also not required.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 13 CFR part 120 which was published at 81 FR 33123 on May 25, 2016, is adopted as a final rule with the following changes:

PART 120—BUSINESS LOANS

■ 1. The authority citation 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 (7), and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115, Pub. L. 111–240, 124 Stat. 2504.

■ 2. Amend § 120.882 by:
■ a. Adding three sentences after the first sentence of paragraph (g)(5), and removing ''10%'' in the last sentence;
■ b. Revising paragraph (g)(6)(i);
■ c. Removing the third and fourth sentences of paragraph (g)(6)(ii) and adding in their place five sentences;
■ d. Removing the words ''refinance loan'' in the last sentence of paragraph (g)(10) and adding the words ''504 loan'' in their place;
■ e. Revising paragraph (g)(12);
■ f. Removing the semicolon at the end of paragraph (i) in the definition of ''Qualified debt'' in paragraph (g)(15), adding a period in its place, and adding two sentences to the end of the paragraph;
■ g. Removing the second sentence of paragraph (vii) in the definition of ''Qualified debt'' in paragraph (g)(15) and adding in its place two sentences; and
■ h. Revising the definition of ''Refinancing Project'' in paragraph (g)(15).

The additions and revisions read as follows:

§ 120.882 Eligible Project costs for 504 loans.

* * * * *

* * *

(g) * * *

(5) * * * If the Refinancing Project involves a limited or single purpose building or structure, the Borrower must contribute not less than 15% (excluding administrative costs), unless SBA determines, in its discretion, and publishes a notice in the **Federal Register**, that due to an economic recession, as determined by the National Bureau of Economic Research or its equivalent, Borrowers may contribute not less than 10% for Refinancing Projects involving a limited or single purpose property during the recession. The lower required contribution by the Borrower will be in effect 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. SBA will publish a notice in the **Federal Register** announcing the date on which the requirement of the lower Borrower contribution ended. * * *

(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, except that if the Borrower's application includes a request to finance the Eligible Business Expenses described in paragraph (g)(6)(ii) of this section, the portion of the Refinancing Project provided by the 504 loan and the Third Party Loan may be no more than 85% of the fair market value of the fixed assets that will serve as collateral and the Borrower may receive no more than 20% of the fair market value of the Eligible Fixed Asset(s) securing the Qualified Debt for Eligible Business Expenses;

(ii) * * * For the purposes of this paragraph (g), ''Eligible Business Expenses'' are limited to the operating expenses of the business that were incurred but not paid prior to the date of application or that will become due for payment within 18 months after the date of application. These expenses may include salaries, rent, utilities, inventory, and other expenses of the business that are not capital expenditures. Debt is not included as an

Eligible Business Expense, except debt that was incurred with a credit card or a business line of credit may be included if the credit card or business line of credit is issued in the name of the small business and the Applicant certifies that the debt being refinanced was incurred exclusively for business related purposes. Loan proceeds must not be used to refinance any personal expenses. Both the CDC and the Borrower must certify in the application that the funds will be used to cover Eligible Business Expenses. * * *

* * * * *

(12) The 504 loans approved under this paragraph (g) must be disbursed within 9 months after loan approval. The Director, Office of Financial Assistance, or his or her designee, may approve a request for extension of the disbursement period for an additional 6 months for good cause.

* * * * *

(15) * * *

Qualified debt is a commercial loan:

* * *

(i) * * * A commercial loan that was refinanced within the two years prior to the date of application (the most recent loan) may be deemed incurred not less than 2 years before the date of the application provided that the effect of the most recent loan was to extend the maturity date without advancing any additional proceeds (except to cover closing costs) and the collateral for the most recent loan includes, at a minimum, the same Eligible Fixed Asset(s) that served as collateral for the former loan that was refinanced. The loan documents and lien instruments for the most recent loan, as well as the loan documents and lien instruments for the loan that was replaced by the most recent loan, must be submitted to SBA as part of the application.

* * * * *

(vii) * * * 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 (whether through a modification to an existing Note or through a refinancing that results in a new Note). The modification (or refinancing) must have been agreed to in writing by the Borrower and the lender of the existing debt no less than one year preceding the date of application, except that a modified (or refinanced) loan may be allowed if the purpose of the modification (or refinancing) was to extend the maturity date of the loan, including any balloon payment, and if, during the one year period prior to the date of application (*i.e.,* in the months prior to and after the modification or refinancing), the Borrower was current on all payments due, there have been no deferments of any payments, and no additional proceeds were advanced through the modification or refinancing (except to cover closing costs). * * *

* * * * *

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, except that if the Refinancing Project includes the financing of Eligible Business Expenses, SBA will not accept as collateral any fixed assets other than the Eligible Fixed Asset(s) securing the Qualified Debt.

* * * * *

Dated: April 26, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–09638 Filed 5–4–18; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Express Bridge Loan Pilot Program; Modification of Fee Policy

AGENCY: U.S. Small Business Administration.

ACTION: Notification of change to Express Bridge Loan Pilot Program and impact on regulatory provision.

SUMMARY: On October 16, 2017, the U.S. Small Business Administration (SBA) published a document announcing the Express Bridge Loan Pilot Program (Express Bridge Pilot). In that document, SBA provided an overview of the Express Bridge Pilot and modified an Agency regulation relating to loan underwriting for loans made under the Express Bridge Pilot. SBA continues to refine and improve the design of the Express Bridge Pilot and is issuing this document to revise the program requirements, including the modification of an Agency regulation relating to fees that can be collected from the Applicant or Borrower in connection with a loan made under the Express Bridge Pilot.

DATES: The revised program requirements described in this document apply to all Express Bridge Pilot loans approved on or after May 7, 2018, and the Express Bridge Pilot will remain available through September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; Telephone (202) 205–3645; email address: *dianna.seaborn@sba.gov.*

SUPPLEMENTARY INFORMATION: On October 16, 2017, SBA published a document announcing the Express Bridge Pilot. (82 FR 47958) The Express Bridge Pilot is designed to supplement the Agency's disaster response capabilities and authorizes the Agency's 7(a) Lenders with SBA Express lending authority to deliver expedited SBA-guaranteed financing on an emergency basis for disaster-related purposes to small businesses located in communities impacted by a Presidentially-declared disaster, while the businesses apply for and await long-term financing (including through SBA's direct disaster loan program, if eligible).

The Express Bridge Pilot applies the policies and procedures in place for the Agency's SBA Express program, except as outlined in the **Federal Register** document published on October 16, 2017. Pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, modify or waive certain regulations in establishing and testing pilot loan initiatives, SBA modified the regulation at 13 CFR 120.150 (''What are SBA's lending criteria?''), which applies to loans made in the 7(a) Business Loan Program. SBA modified the regulation in order to minimize the burdens on the businesses applying for loans through the Express Bridge Pilot and to expand the opportunities for SBA Express lenders to participate in the pilot.

SBA continues to refine and improve the design of the Express Bridge Pilot and, therefore, is issuing this document to clarify the fees that Lenders or third parties are able to collect from Applicants or Borrowers in connection with loans made under the pilot. All Express Bridge Pilot loans are subject to the same upfront guaranty fees required for 7(a) loans of similar size and maturity as set forth in 13 CFR 120.220. In addition, all Express Bridge Pilot loans are subject to the same Lender's annual service fee required for all 7(a) loans as set forth in 13 CFR 120.220(f).

In order to ensure that Applicants and Borrowers are charged only those additional fees reasonably necessary in connection with an Express Bridge Pilot loan, SBA is modifying the regulation at 13 CFR 120.221 (''Fees and expenses which the Lender may collect from a loan applicant or Borrower''), using the term modify as contemplated under 13 CFR 120.3, to permit Lenders to collect only the following: