

§ 120.852 and §§ 120.982–120.984 and would clarify the grounds required for SBA enforcement actions against CDCs as well as SBA's and CDCs' rights and responsibilities in such actions. Section 120.981, voluntary transfer and surrender of CDC certification, would be redesignated as § 120.857 to move it under the new heading.

Section 120.861, job creation or retention, is revised (see discussion of proposed revisions to § 120.829 for a description of the changes to the job requirement criteria). The change in the criteria will be published in a **Federal Register** notice from time to time.

Section 120.862, other economic development objective, includes two technical changes. The first is the Agency-wide replacement of "SIC" codes with "NAICS" codes when identifying the types of small businesses eligible to receive SBA assistance. The second is to correct the cross-reference to the regulation that describes a minority for purposes of the public policy goal of assisting minority-owned businesses. The proposed changes also reflect the statutory changes to section 501(d) of the Act, which added women-owned and veteran-owned businesses to the public policy goals.

Section 120.870, leasing project property, would eliminate references to 504 project property being leased by the CDC to the borrower.

Section 120.880, basic eligibility requirements, proposes simplifying changes by replacing the actual size standards with a cross-reference to the size standard regulation. As the size standard regulations change, so will this regulation without requiring it to be re-written.

Section 120.882, eligible project costs for 504 loans, proposes clarifying eligible costs that may be included in 504 project costs.

Section 120.883, eligible administrative costs for 504 loans, proposes changes clarifying eligible administrative costs that may be paid from the proceeds of the 504 Loan and debenture.

Section 120.892 would be revised to require a 504 loan borrower to provide to the CDC current financial statements within 120 days of 504 loan closing, instead of within 90 days.

SBA proposes to change the headings of §§ 120.900 and 120.910 to make their form consistent with the other section headings in subpart H.

Section 120.911, land contributions, proposes to make a technical correction to the regulation by deleting the reference to CDCs. CDCs do not contribute land for a 504 loan.

Section 120.913, limitations on any SBIC contributions, proposes changes to clarify the heading, and to add a cross-reference and clarify the section.

Section 120.923, policies on subordination, proposes changing the section heading and consolidating existing §§ 120.923 and 120.924.

Section 120.925, preferences, proposes adding a cross-reference to another SBA regulation governing preferences.

Section 120.926, referral fee, proposes modifying the language by adding "reasonable" in describing the referral fee that a CDC may charge a third party lender. The proposed changes also emphasize that neither the lender nor the CDC can charge this fee to the borrower.

Section 120.930, amount, proposes eliminating the requirement that SBA must approve 504 loans between \$25,000 and \$50,000 on an exception basis. SBA does not believe that it ever has declined such a request.

Section 120.931, 504 lending limits, proposes increasing the dollar amounts to reflect the changes to section 502(2) of the Act that became effective December 21, 2000.

Section 120.933, maturity, proposes creating flexibility in debenture maturities. This will permit SBA to consider other maturities besides 10 and 20 years at some future date.

Section 120.934, collateral, proposes clarifying the paragraph by rearranging and re-wording the sentences.

Section 120.935, deposit, proposes changing the heading.

SBA proposes to delete section 120.936, subordination to CDC. SBA believes that this regulation is a holdover from the former 501 and 502 programs. SBA knows of no instance when a CDC has requested a subordination on its 504 Loans.

Section 120.960, responsibility for closing, proposes clarifying language that describes the circumstances under which SBA can decline to close a debenture or cancel its guarantee of the debenture prior to sale.

Section 120.970, servicing of 504 loans and debentures, proposes clarifying language regarding a CDC's responsibility in servicing a 504 loan.

Section 120.971, allowable fees paid by borrower, proposes clarifying language regarding the loan closing fees that a CDC may charge.

Section 120.972, third party lender participation fee and CDC fee, proposes revising the heading, deleting the language "from the Third Party Lender" from paragraph (a), and slightly clarifying paragraph (b). SBA accepts the third party lender participation fee

from the third party lender, the 504 borrower, or the CDC.

SBA proposes to remove §§ 120.980–120.984.

Specific Comments Requested

SBA is considering reordering the entire subpart H, and SBA invites comments specifically responding to this proposal. SBA is considering whether renumbering the regulations within subpart H would better highlight the purposes of the 504 Program and the requirements pertaining to 504 Loans. SBA is considering reordering the sections into the following topic areas in the following new order:

Purpose
How a 504 project is financed
Definitions
Project economic development goals
Loan-making policies specific to 504 loans
Leasing policies specific to 504 loans
Interim financing
Permanent financing
Borrower's contribution
Third party loans 504 loans and debentures
Fees
504 loan and debenture closings
Servicing
Debenture sales and service agents
CDC requirements
Accredited lenders program (ALP)
Premier certified lenders program (PCLP)
Other CDC requirements
SBA oversight of CDCs
CDC transfer, suspension, and revocation
Enforceability of 501, 502, and 503 loan and other laws

SBA would be interested in comments concerning whether renumbering the sections using this scheme would enhance the organization of the Subpart enough to outweigh any confusion it might create in the CDC industry and among borrowers, borrower counsel, and CDC counsel. SBA also would be interested in any other re-ordering proposals commenters may have.

SBA also generally invites comment on all aspects of this proposed rule, including the underlying policies. SBA may rely on its own expertise in promulgating the final rule. Submitted comments will be available to any person or entity upon request.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

Executive Order 13132: For the purposes of Executive Order 13132, SBA determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 12866: The Office of Management and Budget (OMB) has