

SBA requirement or of the CDC's imprudent or commercially unreasonable action, direct the CSA to submit all or some of such payments to SBA to compensate for any such loss.

(b) *Immediate suspension.* If SBA determines that one or more grounds set forth in § 120.854 exist and further determines that immediate action is necessary to prevent the risk of significant loss to SBA or to prevent significant impairment of the integrity of the 504 program, the AA/FA may issue a written notice of immediate suspension to a CDC, suspending all or certain activities of a CDC pertaining to the 504 program, and such suspension will be effective as of the date of the notice. Any such suspension will be for a term determined by SBA in its sole discretion. SBA may combine a notice of immediate suspension with any enforcement action set forth in paragraph (a) of this section.

#### § 120.856 Enforcement procedures.

(a) *SBA's notice to CDC of enforcement action.* Prior to undertaking an enforcement action set forth in § 120.855(a), the AA/FA or his or her authorized delegate must issue a written notice to the affected CDC identifying the proposed enforcement action, setting forth the reasons for the proposed action and, if a suspension also is proposed, stating the term of the proposed suspension.

(b) *SBA's notice to CDC of immediate suspension.* If the AA/FA or his or her authorized delegate undertakes an immediate suspension pursuant to § 120.855(b), he or she must issue a written notice to the affected CDC identifying the scope and term of the suspension, and setting forth the reasons for the proposed action.

(c) *CDC's opportunity to object.* A CDC that desires to contest a proposed enforcement action or an immediate suspension must file, within 30 calendar days of the notice or within some other term established by SBA in its notice, a written objection with the AA/FA or other SBA official identified in the notice. The objection must set forth in detail all grounds known to the CDC to contest the proposed action or immediate suspension and all mitigating factors, and must include documentation that the CDC believes is most supportive of its objection. A CDC must exhaust this administrative remedy in order to preserve its objection to a proposed enforcement action or an immediate suspension.

(d) *SBA's decision on CDC's objection to proposed action.* If the affected CDC files a timely written objection to a proposed enforcement action or

immediate suspension, the AA/FA or his or her authorized delegate must issue a notice of decision to the affected CDC advising whether SBA is undertaking the proposed enforcement action or continuing the immediate suspension. If SBA is undertaking the enforcement action or continuing the immediate suspension, the notice of decision must set forth the grounds for the decision. SBA will issue a notice of decision whenever it deems appropriate. Prior to issuing a notice of decision, SBA in its sole discretion can request additional information from the affected CDC or other parties and conduct any other investigation it deems appropriate. If SBA determines, in its sole discretion, to consider an untimely objection, it must issue a notice of decision pursuant to this paragraph (d).

(e) *SBA's notice of final agency decision.* If SBA chooses not to consider an untimely objection or if the affected CDC fails to file a written objection to a proposed enforcement action or an immediate suspension, and if SBA continues to believe that such proposed enforcement action or immediate suspension is appropriate, the AA/FA or his or her authorized delegate must issue a notice of decision to the affected CDC that SBA is undertaking one or more of the proposed enforcement actions against the CDC or that SBA will continue to pursue an immediate suspension of the CDC. Such a notice of decision need not state any grounds for the action other than to reference the CDC's failure to file a timely objection, and represents the final agency decision. If the affected CDC fails to file a written objection to an immediate suspension, SBA need not issue any further notice to the CDC.

(f) *Appeal to OHA.* A CDC may appeal from an SBA notice of decision issued pursuant to paragraphs (d) and/or (e) of this section, to the SBA Office of Hearings and Appeals (OHA). The rules and procedures set forth in part 134 of this chapter will govern such appeals. OHA must limit its review to a determination of whether SBA's decision was arbitrary, capricious or contrary to law, or without procedure required by law, in accordance with the legal precedent established under 5 U.S.C. 706(2)(A) or 5 U.S.C. 706(2)(D). OHA must limit its review to the record that the AA/FA or his or her authorized delegate, and any other SBA officials directly involved with the decision, considered in making the final decision. OHA must not consider any argument, fact or other information presented by the affected CDC, unless the CDC previously submitted that information

to SBA in or with the affected CDC's objection or in response to a request for information from SBA. A decision by OHA is the final agency decision.

#### § 120.857 Voluntary transfer and surrender of CDC certification. [Redesignated from § 120.981]

33b. Redesignate § 120.981 as § 120.857.

34. Revise § 120.861 to read as follows:

#### § 120.861 Job creation or retention.

A Project must create or retain one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a **Federal Register** notice. Such Job Opportunity average remains in effect until changed by subsequent **Federal Register** publication.

35. Amend § 120.862 as follows:

- a. By revising the parenthetical at the end of paragraph (a)(4);
- b. By revising paragraph (b)(2);
- c. By redesignating paragraphs (b)(3) through (b)(7) as (b)(5) through (b)(9);
- d. By adding new paragraphs (b)(3) and (b)(4); and
- e. By revising redesignated paragraph (b)(5). The revisions and additions read as follows:

#### § 120.862 Other economic development objectives.

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \* (North American Industry Classification System (NAICS), Sectors 31–33); or

\* \* \* \* \*

(b) \* \* \*

(2) Expansion of exports;

(3) Expansion of small businesses owned and controlled by women as defined in section 29(a)(3) of the Act, 15 U.S.C. 656(a)(3);

(4) Expansion of small businesses owned and controlled by veterans (especially service-disabled veterans) as defined in section 3(q) of the Act, 15 U.S.C. 632(q);

(5) Expansion of minority enterprise development (*see* § 124.103(b) of this chapter for minority groups who qualify for this description);

\* \* \* \* \*

36. Amend § 120.870 as follows:

- a. By removing paragraph (b);
- b. By redesignating paragraph (c) as paragraph (b); and
- c. By revising paragraph (a) to read as follows:

#### § 120.870 Leasing Project Property.

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements,