

fee equal to 3.5 percent of the SBA guaranteed portion. (This rule does not change guaranty fees payable or timing of fee payment for loans with maturities for 12 months or less.) SBA is revising § 120.220 to implement these provisions, and will replace the chart currently in the regulations with text. (SBA notes that legislation enacted after the 2000 Act lowered the guaranty fees for some 7(a) loans for the two-year period beginning October 1, 2002. This temporary reduction in the guaranty fee will be reflected in regulations to be published at a later date.)

Section 207 of the 2000 Act added section 7(a)(28) to the Small Business Act with respect to the ability of a borrower in the 7(a) business loan program to lease out a portion of a building constructed with the proceeds of a guaranteed loan. Borrowers under the 7(a) business loan program will now be treated the same as borrowers under SBA's 504 program, established under Title V of the Small Business Investment Act (SBI Act). Specifically, when the use of proceeds is for new construction, section 7(a)(28) allows a 7(a) borrower to permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a 7(a) guaranteed loan, if the borrower permanently occupies and uses not less than 60 percent of the total space at the outset. This provision is substantially similar to section 502(5) of the SBI Act, which is applicable to the 504 program.

To reflect this statutory change, SBA is revising § 120.131 of its regulations to cover the leasing of space in new and existing buildings in both the 7(a) and 504 programs, under the terms permitted by sections 7(a)(28) and 502(5). All the leasing options permitted by the current § 120.131(a) (which reflects leasing options under sections 502(4) and 502(5) of the SBI Act) would be permitted under revised § 120.131(a) and will be available in both the 7(a) and 504 programs.

Section 120.131(a) is being revised to cover the construction of a new building financed with 7(a) or 504 financing. A borrower would be authorized to permanently lease up to 20 percent of the space to one or more tenants if it permanently occupies and uses no less than 60 percent of the rentable property. It would have to plan to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and to plan to permanently use and occupy within ten years all of the remaining space not permanently leased. All the leasing options permitted by the current § 120.131(a), which now

reflects section 502(4) of the SBI Act, will continue to be available under the revised § 120.131(a). Therefore, the language in the current regulations for § 120.131(a) is being replaced by language that describes sections 7(a)(28) and 502(5) only.

Section 120.131(b) is revised to emphasize that this regulation applies to both the 7(a) and 504 loan programs and it deletes the cross reference to section 120.870(c).

Section 209 of the 2000 Act allows the SBA guaranteed portions of export working capital loans to be sold in the secondary market. The provision accomplishes this by eliminating, for export working capital program (EWCP) loans only, the requirement that a loan be fully disbursed before it can be sold in the secondary market. Any other SBA guaranteed loan made under the 7(a) business loan program still must be fully disbursed before a lender can sell the guaranteed portion in the secondary market. SBA is amending § 120.613(b) to reflect this statutory change. Other provisions concerning EWCP loans remain the same.

Section 306 of the 2000 Act amends Section 508 of the SBI Act (15 U.S.C. 697e), which relates to Premier Certified Lenders Program (PCLP). Section 306 requires that, if upon default in repayment, SBA acquires a loan guaranteed under this section (a PCLP loan) and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice to any CDC which has a contingent liability under this section. Currently, only a Premier CDC under the PCLP has a contingent liability with respect to a 504 loan even if SBA's loss is not caused by the Premier CDC's negligence, fraud, or misrepresentation. Thus, SBA is adding a new § 120.540(f) to make clear that SBA is required to give notice only to a Premier CDC which has a contingent liability with respect to a PCLP loan SBA intends to include in a bulk asset sale.

Section 306 requires that SBA give notice to the Premier CDC as soon as possible after the financing is identified for sale, but not less than 90 days before the date SBA first makes any records on such financing available for examination by prospective purchasers prior to such loan being offered in a package of loans for bulk sale. SBA is adding this requirement in new § 120.540(f).

#### **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)**

This rule 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. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a "significant regulatory action" under section 3(f) of Executive Order 12866.

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

This rule 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. This rule also will not have retroactive or preemptive effect.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification, that certification must be published along with a statement providing the factual basis for such certification. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for that certification is provided below.

Section 202 of the Act raises SBA's guaranty from 75 percent for loans of \$100,000 or less to 85 percent for loans of \$150,000 or less, which is intended to reduce lender risk and reduce lender cost for providing small business loans and thus increase the availability of