

regulation without requiring it to be rewritten. Comments received were supportive of this change. Therefore, SBA is adopting § 120.880 as proposed.

Section 120.882, eligible project costs for 504 loans, clarifies eligible costs that may be included in 504 project costs. SBA received some comments on this regulation requesting clarification. For example, previously the regulation included accounting fees as a professional fee, but the proposed rule does not. SBA deliberately proposed to remove accounting fees because even though the regulation stated that only fees attributable to the project were to be included, borrowers were submitting as accounting costs fees charged by their accountant to prepare financial statements, which are a cost of doing business, not a project-related cost. The final rule retains this charge. Commenters were also concerned that certain items in the proposed rule were not project-related fees, such as hazard and flood insurance. SBA considered these concerns and agreed. Therefore, SBA is deleting hazard and flood insurance from the list of eligible project costs in § 120.822. Recording fees are eligible project costs, and are already covered in § 120.882(a), and therefore do not appear in § 120.882(c) in the final rule. Other comments were concerned that such fees as permit fees and utility hook-up fees were not included. SBA believes such fees are already covered by § 120.882(a), (b), and (d), which SBA did not propose to change. As a result of comments, SBA also deleted the reference to § 120.971(a)(2) which limits legal fees associated with a 504 loan and debenture closing. SBA was concerned that the limitation might be construed as also applying to legal fees that are part of eligible project costs. This rule adopts section § 120.882 as proposed except as discussed.

Section 120.883, eligible administrative costs for 504 loans, clarifies eligible administrative costs that may be paid from the proceeds of the 504 Loan and debenture. SBA received some comments on this proposed regulation that sought clarification. The comments objected to what was perceived as a stricter interpretation of eligible administrative costs for 504 loans than previously permitted. SBA intends this result, because administrative costs must be very limited in order to protect the government's lien position in the collateral. SBA's lien generally is in a second lien position behind a larger first lien securing the third party loan. The Act requires the borrower to contribute at least 10 percent towards the project costs (see section 502(3)(c) of the Act).

The calculation of the amount of SBA's share of the financing (up to a maximum of 40 percent) as well as the borrower's contribution is based on the total amount of project costs. Administrative costs were designed to permit the borrower to finance a limited number of specific fees above the project costs as part of the debenture financing that receives SBA's 100 percent guarantee. Every dollar of administrative cost that is included in the debenture increases SBA's exposure on the debenture and erodes the equity cushion provided by the borrower in the collateral. Therefore, it is SBA's intention that only the specific fees listed in the regulation be financed by the debenture and receive SBA's guaranty protection. Fees that are not eligible project costs or eligible administrative costs must be treated separately as a cost of doing business by the borrower. Accordingly, § 120.883 in the final rule refers to all of § 120.882, not just to § 120.882(c), to clarify that none of the fees that qualify as eligible project costs under § 120.882 may be included as administrative costs included in the debenture. This rule adopts § 120.883 as it was published in the proposed rule except as discussed.

Section 120.892 is 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. Comments received were supportive of this change. This rule adopts § 120.892 as proposed.

SBA is changing 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, makes 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, clarifies the heading, and adds a cross-reference and clarifies the section.

Section 120.923, policies on subordination, changes the section heading and consolidates the current §§ 120.923 and 120.924.

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

Section 120.926, referral fee, modifies the current language by adding "reasonable" in describing the referral fee that a CDC may charge a third party lender. The changes also emphasize that neither the lender nor the CDC can charge this fee to the borrower. SBA received one comment that suggested that a CDC be permitted to charge a referral fee to a borrower. The commenter believes that it is in the best

interest of a potential borrower that requires additional help in accessing capital to charge this fee directly to the borrowers. The commenter also stated that the inability to charge the fee to a borrower would be a disincentive to the CDC to find a lender for difficult or rural-based loans. SBA considered this comment but was not persuaded. SBA has observed that the fees permitted to be charged by a CDC to a borrower have generally been sufficient to reimburse a CDC for its services related to all aspects of a 504 financing. With the increase in choice among CDCs for a potential 504 borrower as a result of this rule, SBA believes the fees permitted to be charged to a borrower are sufficient incentive to CDCs to make financing available to all eligible and credit-worthy 504 borrowers.

Section 120.930, amount, eliminates 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. Comments received on §§ 120.900–120.930 were generally supportive. SBA is adopting § 120.900, § 120.910, § 120.911, § 120.913, § 120.923, § 120.925, § 120.926, and § 120.930 as they were proposed.

Section 120.931, 504 lending limits, increases the dollar amounts to reflect the changes to section 502(2) of the Act that became effective December 21, 2000. Comments received suggested that this section be adjusted automatically to reflect any changes established by Congress. SBA considered these comments but believes the suggestions are beyond the scope of the proposed rule. SBA is adopting § 120.931 as proposed.

Section 120.933, maturity, creates flexibility in debenture maturities. This will permit SBA to consider other maturities besides 10 and 20 years at some future date. SBA received comments regarding the proposed change that expressed concern regarding SBA's proposal to permit additional maturities. The comments suggested that this would "cause chaos in the funding markets" or "wreak havoc." SBA considered these comments and strongly disagrees. SBA notes that the home mortgage industry has expanded the number of maturities offered substantially to better serve the needs of home loan borrowers. While SBA has no immediate plans to make changes to the 10 and 20-year maturities now used, SBA believes it is important that the Agency has this flexibility in order to serve the changing needs of the small business community. Therefore, SBA is publishing the regulation as proposed to