

permit SBA greater flexibility in meeting the needs of the marketplace.

Section 120.934, collateral, clarifies the paragraph by rearranging and rewording the sentences.

Section 120.935, changes the heading.

Section 120.936, subordination to CDC, is deleted. 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.

Comments received were supportive of the changes to §§ 120.934–120.936. SBA adopts §§ 120.934, 120.935, and 120.936 as they were published in the proposed rule.

Section 120.960, responsibility for closing, describes the circumstances under which SBA can decline to close a debenture or cancel its guaranty of the debenture prior to sale. Several comments received suggested that the regulation gives too much unilateral authority to SBA. While the commenters did not suggest that SBA eliminate its right to review the debenture closing before the debenture sale, they did suggest that SBA would have too much discretion under this regulation as proposed, to decline to approve a debenture for sale. SBA considered these concerns and agrees that several changes are needed, which will make this section more consistent with SBA's long-standing practice in place for SBA-guaranteed 7(a) loans but without eliminating SBA's review of 504 loan and debenture closing prior to debenture sale. SBA has not proposed to, and does not in the final rule eliminate, this prior review by SBA, because of the significant differences between the 504 Program and the 7(a) program with regard to SBA's practice for determining SBA's liability under its guaranty. SBA believes it must have the discretion to take the actions set forth in § 120.960(c) in order to adequately protect SBA's guaranty of the debenture and minimize the credit risk to the entire 504 loan portfolio.

Section 120.524 describes the bases upon which SBA may be released from liability on its guaranty for 7(a) loans. SBA reviews the 7(a) lender's documentation after the 7(a) loan is closed and disbursed and usually only after a default. The purpose of the review is to determine whether SBA should honor its guaranty by granting a purchase request, seek a reduction in SBA's guaranty liability, deny liability in full or in part on SBA's guaranty, or seek recovery from the lender if the SBA has already purchased the loan from the secondary market holder or from the lender itself. The purchase review is a process that serves to minimize an

erroneous payment by SBA, by ensuring that SBA purchases only those loans which were originated, closed, serviced and liquidated in accordance with the loan authorization, prudent lending standards, and SBA regulations and other requirements.

As discussed under § 120.848, currently there is no such purchase review process for 504 loans; SBA simply honors its guaranty to the debenture holder and generally does not seek recovery against the CDC for SBA's loss under the guaranty (although SBA has such regulatory authority). If a CDC were to close a 504 loan and debenture without SBA review, then SBA likely would need to create a new review process, to take place after SBA's purchase of the debenture upon default on the 504 loan, to ensure that the CDC had closed the 504 loan in accordance with the loan authorization, prudent lending standards and SBA regulations and other requirements, and if a deficiency were discovered, SBA would need to determine the extent to which SBA should seek recovery from the CDC for SBA's loss under its guaranty. SBA does not intend to implement such a process in the 504 Program at this time. For these reasons and based on recommendations from commenters, in the final rule SBA added the word "materially" to § 120.960(c)(1), to make it consistent with § 120.524(a)(1); and changed the phrase "a material adverse change" to "an unremedied material adverse change" to § 120.960(c)(7), to make it consistent with the terms of the 504 loan authorization. Other than these changes, § 120.960 is implemented as proposed.

Section 120.970, servicing of 504 loans and debentures, clarifies the regulation regarding a CDC's responsibility in servicing a 504 loan. Comments received on this regulation suggested that SBA establish a new borrower fee identified as a "default servicing fee." According to the commenters, the borrower would incur the fee if the borrower failed to comply with certain requirements such as submitting financial statements. Since the proposed rule did not propose this new fee to a borrower, this suggestion is beyond the scope of the proposed rule. Comments also suggested that § 120.970(c) was confusing because it seemed to suggest that the borrower, not the CDC, was responsible for filing renewals and extensions of security interests. SBA considered these comments and concurs. SBA has modified the rule to clarify that the CDC is responsible for filing renewals and extensions. This rule adopts § 120.970

as it was published in the proposed rule except as discussed.

Section 120.971, allowable fees paid by borrower, clarifies the language describing the loan closing fees that a CDC may charge. Comments received suggested a change to permit CDCs the ability to increase the servicing fee charged to an uncooperative borrower for issues such as not providing required statements of proof of insurance, evidence of tax payments or financial statements. SBA considered these comments but believe they are beyond the scope of this rulemaking. This rule adopts § 120.971 as proposed.

Section 120.972, third-party lender participation fee and CDC fee, revises the heading, deletes the language "from the Third Party Lender" from paragraph (a), and slightly clarifies paragraph (b). SBA may accept the third party lender participation fee from the third party lender, the 504 borrower, or the CDC. This final rule implements § 120.972 as proposed.

SBA is removing §§ 120.980–120.984. Comments received were supportive of these changes. This rule removes §§ 120.980–120.984.

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, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 12988: For purposes of Executive Order 12988, Civil Justice Reform, SBA determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in paragraph 3 of that Order.

Executive Order 12866: The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. SBA received no comments regarding the Executive Order from the public. SBA believes there is a need for this regulatory action for the reasons stated in the preamble above. SBA believes these regulatory changes will improve 504 Program delivery to small business customers to increase customer choice of service; increase third party lender choice of CDCs; facilitate the formation of new CDCs; facilitate the expansion of existing CDCs; and increase the number of CDCs able to take advantage of special initiatives for rural areas. By allowing market-driven forces to determine availability of 504 Program