

(2) 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. 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. If the OHA decides that SBA's decision was arbitrary, capricious, contrary to law, or without procedure required by law, the OHA must remand the matter to the AA/FA or the original deciding official for further consideration. The CDC may appeal from a reconsidered SBA decision as set forth in this paragraph (e).

(3) (i) OHA must not consider any argument, fact or other information presented by the affected CDC unless the CDC previously submitted that information to SBA:

(A) In or with the affected CDC's objection;

(B) In response to a request for information from SBA; or

(C) Pursuant to paragraph (b)(5) of this section if such information was accepted by SBA.

(ii) However, if a CDC can show that there is newly discovered material evidence which, despite the CDC's exercise of due diligence, could not have been discovered before the Agency's final decision, or that there are compelling reasons beyond the CDC's control why it was not able to present a material fact or argument to the AA/FA or other deciding SBA official prior to such decision, and that the CDC has been prejudiced by not being able to present such information to the official, the CDC may file a motion with the OHA for a remand of the matter.

(4) A decision by OHA, other than a remand, is the final agency decision.

(f) *Limit on applicability.* The procedures in this section shall only apply to an action taken by SBA pursuant to § 120.855.

■ 35b. Add a new undesignated center heading immediately preceding new § 120.854 to read as follows:

#### **SBA Enforcement Actions**

■ 35c. Redesignate § 120.981 as § 120.857.

■ 36. 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.

■ 37. 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);

\* \* \* \* \*

■ 38. Amend § 120.870 as follows:

■ a. By removing paragraph (b);

■ b. By redesignating paragraph (c) as paragraph (b); and

■ c. By revising paragraph (a) introductory text 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, and/or to purchase and install machinery and equipment located on land leased to the Borrower by an unrelated lessor if:

\* \* \* \* \*

■ 39. Revise the heading of § 120.871 to read as follows:

#### **§ 120.871 Leasing part of Project Property to another business.**

\* \* \* \* \*

■ 40. Amend § 120.880 by revising paragraph (b) to read as follows:

#### **§ 120.880 Basic eligibility requirements.**

\* \* \* \* \*

(b) Together with its Affiliates, meet one of the size standards set forth in § 121.301(b) of this chapter.

■ 41. Revise § 120.882(c) to read as follows:

#### **§ 120.882 Eligible Project costs for 504 loans.**

\* \* \* \* \*

(c) Professional fees directly attributable and essential to the Project, such as title insurance, opinion of title, architectural and engineering costs, appraisals, environmental studies, and legal fees related to zoning, permits, or platting; and

\* \* \* \* \*

■ 42. Revise paragraph (d) of § 120.883 to read as follows:

#### **§ 120.883 Eligible administrative costs for 504 loans.**

\* \* \* \* \*

(d) Borrower's out-of-pocket costs associated with 504 loan and Debenture closing other than legal fees (for example, certifications and the copying costs associated with them, overnight delivery, postage, and messenger services) but not to include fees and costs described in § 120.882;

\* \* \* \* \*

■ 43. Amend § 120.892(b) by removing the phrase "90 days" and adding in its place the phrase "120 days".

■ 44. Revise the heading of § 120.900 to read as follows:

#### **§ 120.900 Sources of permanent financing.**

\* \* \* \* \*

■ 45. Revise the heading of § 120.910 to read as follows:

#### **§ 120.910 Borrower contributions.**

\* \* \* \* \*

■ 46. Revise § 120.911 to read as follows:

#### **§ 120.911 Land contributions.**

The Borrower's contribution may be land (including buildings, structures and other site improvements which will be part of the Project Property) previously acquired by the Borrower.

■ 47. Revise § 120.913 to read as follows:

#### **§ 120.913 Limitations on any contributions by a Licensee.**

Subject to part 107 of this chapter, a Licensee may provide financing for all or part of the Borrower's contribution to the Project. SBA will consider Licensee funds to be derived from federal sources if the Licensee has Leverage (as defined in § 107.50 of this chapter). If the Licensee does not have Leverage, SBA will consider the investment to be from private funds. Licensee financing must be subordinated to the 504 loan and must not be repaid at a faster rate than the Debenture. (Refer to § 120.930(a) for additional limitations.)