

■ 48. Amend § 120.923 by revising the heading to read as follows:

**§ 120.923 Policies on subordination.**

\* \* \* \* \*

■ 48a. Redesignate § 120.924 as paragraph (c) of § 120.923.

■ 49. Amend § 120.925 by adding a parenthetical at the end to read as follows:

**§ 120.925 Preference.**

\* \* \* (See § 120.10 for a definition of Preference.)

■ 50. Revise § 120.926 to read as follows:

**§ 120.926 Referral fee.**

The CDC can receive a reasonable referral fee from the Third Party Lender if the CDC secured the Third Party Lender for the Borrower under a written contract between the CDC and the Third Party Lender. Both the CDC and the Third Party Lender are prohibited from charging this fee to the Borrower. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

■ 51. Revise paragraph (b) of § 120.930 to read as follows:

**§ 120.930 Amount.**

\* \* \* \* \*

(b) A 504 loan must not be less than \$25,000.

\* \* \* \* \*

■ 52. Revise § 120.931 to read as follows:

**§ 120.931 504 Lending limits.**

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this part must not exceed \$1,000,000 (or \$1,300,000 if one or more of the public policy goals enumerated in § 120.862(b) applies to the Project).

■ 53. Revise § 120.933 to read as follows:

**§ 120.933 Maturity.**

From time to time, SBA will publish in the **Federal Register** the available maturities for a 504 loan and the Debenture that funds it. Such available maturities remain in effect until changed by subsequent **Federal Register** publication.

■ 54. Revise § 120.934 to read as follows:

**§ 120.934 Collateral.**

The CDC usually takes a second lien position on the Project Property to secure the 504 loan. Sometimes additional collateral is required. (In rare circumstances, SBA may permit other collateral substituted for Project Property.) All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice

to SBA and the CDC in the event of impending lapse of coverage.

■ 55. Revise the heading of § 120.935 to read as follows:

**§ 120.935 Deposit from the Borrower that a CDC may require.**

\* \* \* \* \*

**§ 120.936 [Removed]**

■ 56. Remove § 120.936.

■ 57. Revise § 120.960 to read as follows:

**§ 120.960 Responsibility for closing.**

(a) The CDC is responsible for the 504 loan closing.

(b) The Debenture closing is the joint responsibility of the CDC and SBA.

(c) SBA may, within its sole discretion, decline to close the Debenture; direct the transfer of the 504 loan to another CDC; or cancel its guarantee of the Debenture, prior to sale, if any of the following occur:

(1) The CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization;

(2) The CDC has failed to make or close the 504 loan or prepare the Debenture closing in a prudent or commercially reasonable manner;

(3) The CDC's improper action or inaction places SBA at risk;

(4) The CDC has failed to use required SBA forms or electronic versions of those forms;

(5) The CDC, Third Party Lender or Borrower has failed to timely disclose to SBA a material fact regarding the Project or 504 loan;

(6) The CDC, Third Party Lender or Borrower has misrepresented a material fact to SBA regarding the Project or 504 loan; or

(7) SBA determines that there has been an unremedied material adverse change, such as deterioration in the Borrower's financial condition, since the 504 loan was approved, or that approving the closing of the Debenture will put SBA at unacceptable financial risk.

■ 58. Revise the undesignated center heading immediately preceding § 120.970 to read as follows:

**Servicing**

■ 59. Revise § 120.970 to read as follows:

**§ 120.970 Servicing of 504 loans and Debentures.**

(a) In servicing 504 loans, CDCs must comply with 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan

authorizations, Debentures, and agreements between the CDC and SBA, and in accordance with prudent and commercially reasonable lending standards.

(b) The CDC is responsible for routine servicing including receipt and review of the Borrower's or Operating Company's financial statements on an annual or more frequent basis and monitoring the status of the Borrower and 504 loan collateral.

(c) The CDC is responsible for assuring that the Borrower makes all required insurance premium payments and has paid all taxes when due.

(d) The CDC is responsible for filing renewals and extensions of security interests on collateral for the 504 loan, as required.

(e) The CDC must timely respond to Borrower requests for loan modifications.

(f) For any 504 loan that is more than three months past due, the CDC must promptly request that SBA purchase the Debenture unless the 504 loan has an SBA-approved deferment or is in compliance with an SBA-approved plan to allow the Borrower to catch up on delinquent loan payments.

(g) The CDC must cooperate with SBA to cure defaults and initiate workouts.

(h) SBA may negotiate agreements with CDCs to liquidate 504 loans.

■ 60. Add a new undesignated center heading immediately preceding § 120.971 to read as follows:

**Fees**

■ 61. Revise paragraphs (a) (introductory text) and (a)(2) of § 120.971 to read as follows:

**§ 120.971 Allowable fees paid by Borrower.**

(a) *CDC fees.* The fees a CDC may charge the Borrower in connection with a 504 loan and Debenture are limited to the following:

\* \* \* \* \*

(2) *Closing fee.* The CDC may charge a reasonable closing fee sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs (CDC Closing Fee). Some closing costs may be funded out of the Debenture proceeds (see § 120.883 for limitations);

\* \* \* \* \*

■ 62. Revise § 120.972 to read as follows:

**§ 120.972 Third Party Lender participation fee and CDC fee.**

(a) *Participation fee.* For loans approved by SBA after September 30, 1996, SBA must collect a one-time fee equal to 50 basis points on the Third