

counsel fees to reduce costs to the Borrower.

SBA has determined that there is no reason for SBA to refer to any legal fee amount. Whether it is viewed as a ceiling or a base, the \$2,500 reference has apparently caused misunderstanding and may have had an effect on legal fees charged. SBA believes legal fees should be determined by the competitive market. Therefore, proposed §§ 120.883(d) and 120.961(a), omit any reference to amount.

(d) Eligible Use of Proceeds. In the current regulations, airplanes are not eligible for 504 loans, except that Alaskan and Hawaiian Projects may include airplanes not exceeding 20 percent of the Project cost, if they are indispensable to the Project. SBA proposes to eliminate this exception (§ 120.884(d)(2)), previously justified because of the great distances people must travel in those states. But distances are great in many mainland states, as well, and airplanes simply are not directly attributable and necessary for a Project.

Also, in the current regulations there is no direct reference to the eligibility of construction equipment as a distinct sub-category of equipment and machinery. CDCs and SBA often receive questions from potential Borrowers as to whether construction equipment is eligible for 504 financing. The proposed rule in § 120.884(d)(3) clarifies that construction equipment is ineligible for 504 financing unless it is heavy duty equipment integral to the operation of a business and meeting the IRS definition of capital equipment. Note also that § 120.884(d)(1) clarifies SBA policy that short term equipment is a permitted use of loan proceeds if the equipment is essential to the Project and reflects a minor percentage of the loan. This is not a change in policy.

(e) Definitions. SBA has created several new definitions to help make the regulation easier to understand. Comments and suggestions will be appreciated.

Several definitions clarify terms long associated with the 504 program which were included in the regulations, but were not defined. These include "Area of Operations," "Certificate," "Debenture," "Job Opportunity," and "Substantial Increase in Unemployment."

Finally, some key words have been replaced with more useful and apt words. A "Small Business Concern" is now a "Small Business." The term "Underwriter" has replaced "Pooler." The term "Project" has replaced "Plant." "Project Property" is a new

definition previously undefined in the regulation.

(f) Minor Policy Changes. In proposed § 120.828, the minimum level of CDC lending activity is no longer set at a specific number; SBA will retain the ability to change this number through its program announcements based on program performance and the economy. In proposed § 120.939(b), CDCs will be liable for SBA losses incurred by "wrongful CDC conduct" as well as in cases of fraud and negligence.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. It is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

#### List of Subjects

#### 13 CFR Part 108

Equal employment opportunity, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

#### 13 CFR Part 116

Coastal Zone, Flood insurance, Flood plains, Lead poisoning, Small businesses, Veterans.

#### 13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

#### 13 CFR Part 122

Community development, Employee benefit plans, Energy conservation, Environmental protection, Exports, Individuals with disabilities, Loan programs-business, Loan programs-energy, Loan programs-veterans, Microloans, Reporting and recordkeeping requirements, Small businesses, Solar energy, Trusts and trustees, Veterans.

#### 13 CFR Part 131

Loan programs-business, Small businesses.

Accordingly, pursuant to the authority set forth in sections 5 (b)(1) and (b)(6) of the Small Business Act, 15 U.S.C. 634(b)(6) and 636 (a) and (h), SBA hereby proposes to amend Chapter I of Title 13, Code of Federal Regulations (CFR), as follows:

1. Part 120 would be revised to read as follows:

### PART 120—BUSINESS LOANS

General Descriptions of SBA's Business Loan Programs

#### Sec.

120.1 Which loan programs does this part cover?

120.2 Descriptions of the business loan programs.

120.3 Pilot programs.

#### Definitions

120.10 Definitions.

#### Subpart A—Policies Applying to All Business Loans

##### Eligibility Requirements

120.100 What are the basic requirements for all Borrowers?

120.101 Credit not available elsewhere.

120.102 Funds not available from alternative sources, including personal resources of principals.

120.103 Are farm enterprises eligible?

120.104 Are businesses financed by SBICs eligible?

120.105 Special consideration for veterans.

##### Ineligible Businesses and Eligible Passive Companies

120.110 What businesses are ineligible for SBA business loans?

120.111 What conditions must an Eligible Passive Company satisfy?

##### Uses of Proceeds

120.120 What are eligible uses of proceeds?

120.130 Restrictions on uses of proceeds.

##### Ethical Requirements

120.140 What ethical requirements apply to participants?

##### Credit Criteria for SBA Loans

120.150 What are SBA's lending criteria?

120.151 What is the statutory limit for total loans to a Borrower?

120.160 Loan conditions.