



SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 123

RIN 3245-AG98

Regulatory Reform Initiative: Streamlining and Modernizing the 7(a), Microloan, and 504 Loan Programs to Reduce Unnecessary Regulatory Burden

AGENCY: U.S. Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration (SBA) is proposing to remove or revise various regulations affecting its business loan programs because these regulations are obsolete, unnecessary, ineffective, or burdensome. In addition, one of the regulations that SBA is proposing to remove is cross-referenced in a regulation in SBA's Disaster Loan Program; SBA is proposing to make a conforming change to that regulation. SBA also is making several technical amendments to the regulations to incorporate recent statutory changes and other non-substantive changes. These changes are being proposed to carry out the mandate in various Executive Orders to reduce the number and costs of the regulations that Federal agencies impose on the public.

DATES: Comments are requested on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AG98, using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Search for the rule by RIN number 3245-AG98 and follow the instructions for submitting comments.

Mail: Linda Reilly, Chief, 504 Loan Program Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Linda Reilly, Chief, 504 Loan Program Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination as to whether to publish the information.

FOR FURTHER INFORMATION CONTACT: Linda Reilly, Chief, 504 Loan Program Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416; phone: (202) 205-9949; e-mail address: linda.reilly@sba.gov.

SUPPLEMENTARY INFORMATION:

A. General Information

The mission of SBA is to maintain and strengthen the Nation's economy by enabling the establishment and viability of small businesses, and by assisting in economic recovery of communities after disasters. In carrying out this mission, SBA has developed a regulatory policy that is implemented primarily through several core program offices: Office of Capital Access, Office of Disaster Assistance, Office of Entrepreneurial Development, Office of Government Contracting and Business Development, Office of International Trade, and Office of Investment and Innovation. SBA's regulations are codified at title 13 of the Code of Federal Regulations (CFR), chapter I, and consist of parts 100 through 199.

This rulemaking primarily addresses the regulations in part 120, Business loans. The SBA programs that are governed by the regulations contained in part 120 include the following: the 7(a) Loan Program authorized pursuant to section 7(a) of the Small

Business Act (the Act) (15 U.S.C. 636(a)); the Microloan Program authorized pursuant to section 7(m) of the Act (15 U.S.C. 636(m)); and the Development Company Program (the 504 Loan Program) authorized pursuant to Title V of the Small Business Investment Act of 1958, as amended (15 U.S.C. 695 et seq.). Because this rulemaking proposes to remove a regulation that is cross-referenced in SBA's Disaster Loan Program regulations, this rule would also make one conforming change to a regulation in part 123, Disaster loans. The Disaster Loan Program is authorized pursuant to section 7(b) of the Act (15 U.S.C. 636(b)).

Federal agencies have an ongoing responsibility to ensure that the regulations they issue do not have an adverse economic impact on those affected by those rules. This responsibility has been reinforced over the years in various executive orders that have expressly directed agencies to review their regulations with an eye towards reducing the time and money the public must spend to comply with the regulatory requirements. The most recent of these executive orders are discussed below; each of them provides the framework for SBA's efforts to reduce the regulatory burden on the participants in the agency's programs. One of SBA's primary objectives in carrying out these efforts is to continue to promote economic growth, innovation, and job creation in the small business sector, and to ensure that victims of disasters have the clear policy and procedural guidance they need to quickly obtain financial assistance to rebuild their lives.

B. Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and

(ii) use the cost savings from any cancelled regulations to offset the cost of the new regulation, such that its net cost is no greater than zero.

C. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things, eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified.

D. Executive Order 13563

Under Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), agencies are obligated to conduct a retrospective review of their regulations to seek more affordable, less intrusive means to achieve policy goals, and to give careful consideration to the benefits and costs of their regulations. Executive Order 13563, similar to the mandates in Executive Order 13771 and Executive Order 13777, also requires agencies to review existing rules to remove outdated regulations that stifle job creation and make the U.S. economy less competitive.

E. Comments Received in Response to Request for Information

On August 15, 2017, SBA published a request for information in the *Federal Register* seeking input from the public in identifying those regulations that affected parties believe impose unnecessary burdens or costs that exceed their benefits, eliminate jobs or inhibit job creation, or are ineffective or outdated. See 82 FR 38617. On October

13, 2017, SBA extended the period for public comments until November 15, 2017. See 82 FR 47645. SBA reviewed the comments submitted by the public in response to that request. After considering these comments and reviewing the regulations in 13 CFR part 120, SBA is proposing that the regulations identified below in the section-by-section analysis be either removed or revised. Except for the one conforming change to the Disaster Loan Program in part 123, SBA is proposing the removal of regulations in other parts of title 13 in separate rulemakings.

F. Section-by-Section Analysis

Section 120.2. SBA proposes to remove paragraphs (a)(1)(i) and (ii) of this section because SBA has not received funding to make direct or immediate participation 7(a) loans for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency.

Section 120.10. SBA is proposing to remove the references to non-lending technical assistance providers (NTAPs) in the definition of “Risk Rating” because SBA has not issued grant funds to NTAPs for many years.

Section 120.103. SBA proposes to remove this section on farm enterprises, which refers to an outdated Memorandum of Understanding between SBA and the United States Department of Agriculture (USDA), because it is unnecessary. Although Federal financial assistance to agricultural businesses is generally available from USDA, SBA is also statutorily authorized to make non-disaster business loans to agricultural enterprises under sections 3(a)(1) and 7(a) of the Small Business Act and Title V of the Small Business Investment Act.

Sections 120.110. This section lists the types of businesses that are ineligible for SBA business loans. For clarity, SBA is proposing to make changes to two of the types of businesses on the list. First, SBA would amend paragraph (h), which currently provides that businesses “engaged in any illegal activity” are ineligible, by revising it to

provide that the business is ineligible if it is “engaged in any activity that is illegal under Federal, State, or local law”. SBA wants to make it clear, consistent with its longstanding interpretation of this regulation, that the business is ineligible if it is engaged in any activity that is illegal at any level of government in the jurisdiction in which the business is operating.

Second, SBA is proposing to remove and reserve paragraph (k), which currently provides that a business is ineligible if it is “principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting”. This provision, which was promulgated in 1996, is not consistent with current Supreme Court jurisprudence in that it focuses on the nature of the business and whether the business has a major religious component instead of on how the loan proceeds from any SBA business loan will be used. In both Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017) and Espinoza v. Montana Department of Revenue, ___ U.S. ___ (June 30, 2020), the Court held that the government may not deny a public benefit to an entity solely because of its religious status, character, or identity.

Accordingly, to conform SBA’s regulations to current Supreme Court jurisprudence, SBA is proposing to remove paragraph (k) from section 120.110 , and will apply relevant case law to assure that the intended use of the loan proceeds of SBA business loans is consistent with the requirements of the First Amendment’s Establishment Clause..

Third, SBA proposes to revise paragraph (n), which currently provides that a business is ineligible if an Associate “is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude”. With respect to ineligibility based on indictment for a crime, SBA would change this paragraph to provide that a business is ineligible if an Associate “is under indictment” instead of “has been indicted”. SBA wants to make clear, consistent with its longstanding interpretation of this regulation, that the business is not ineligible if an Associate has a history of ever being indicted (but not

convicted), but would be ineligible only if an Associate is under indictment when the business submits a loan application or prior to loan approval. In addition, SBA is proposing to replace the phrase, “a crime of moral turpitude”, which is not always easily defined and can vary by State, with “a crime involving or related to financial misconduct or a false statement”. SBA believes that the proposed standard is clearer and more relevant to SBA’s responsibility to carry out the business loan programs in a financially prudent manner.

Section 120.111. SBA is proposing to revise this section by removing a duplicative sentence at the end of the introductory text.

Section 120.120. This section describes the eligible uses of loan proceeds. For clarity, SBA is proposing to revise paragraph (a)(1), which currently provides that a Borrower may use loan proceeds to “acquire land (by purchase or lease)”, to add that the land must be “actively used in the applicant’s business operations (except that a Borrower may lease a portion of the property in accordance with 13 CFR 120.131 and 120.870(b))”. This change reflects SBA’s prohibition against financing passive activities other than Eligible Passive Companies under 13 CFR 120.111.

Section 120.173. SBA proposes to remove this section, which prohibits the use of lead-based paint if loan proceeds are for the construction or rehabilitation of a residential structure. This regulation is unnecessary because 16 CFR part 1303 already bans paint containing a concentration of lead in excess of 0.009% (90 parts per million) for use in residences, schools, hospitals, parks, playgrounds, and public buildings or other areas where consumers will have direct access to the painted surface.

Section 120.190. SBA proposes to remove the reference to immediate participation loans in paragraph (a) and to remove paragraph (d), which refers to direct loans, because SBA has not received funding for immediate participation or direct loans

for over 30 years and believes that it may be confusing to the public to refer to such loans when they are not available from the agency.

Section 120.192. This section states that loan applicants will receive notice of approval or denial of the loan application by the Lender, Certified Development Company (CDC), Microloan Intermediary, or SBA, as appropriate. SBA provided notice to the applicant only when it made direct loans. Because SBA has not received funding for direct loans for over 30 years, it is no longer necessary to include the reference to SBA in this section.

Section 120.211. SBA is proposing to remove this section, which describes the statutory limits for direct loans and immediate participation loans, because SBA has not received funding to make these loans for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the agency.

Section 120.212. This section establishes the maturities for a 7(a) loan. Paragraph (b) of this section establishes the loan term at ten years or less, unless the loan finances or refinances real estate or equipment with a useful life exceeding ten years. When the loan is used to finance equipment or leasehold improvements, SBA is proposing to amend paragraph (b) to allow a Lender to add a reasonable period, not to exceed 12 months, to the loan term when necessary to complete the installation of the equipment and/or complete the leasehold improvements.

Section 120.213. SBA is proposing to remove paragraph (b), which describes the interest rate charged by SBA for direct loans, for which SBA has not received funding for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency. The remainder of the section would be revised accordingly.

Sections 120.214. Paragraph (c) of section 120.214 currently allows Lenders to use one of three base rate options for calculating the maximum variable interest rate for 7(a) and 504 loans: the prime rate (Prime), the Optional Peg Rate, and the thirty-day London Interbank Offered Rate (LIBOR) plus 3 percentage points. SBA is proposing to remove the LIBOR option in paragraph (c)(ii). The U.K. Financial Conduct Authority announced on July 27, 2017, that it would phase-out LIBOR by the end of 2021, and no generally accepted replacement for LIBOR has been identified or widely adopted at this time. To provide certainty to SBA Lenders and Borrowers in advance of LIBOR's sunset in 2021, SBA is proposing to remove from the regulation the reference to LIBOR as an optional base rate for variable rate 7(a) and 504 loans.

Lenders will only be able to use Prime or the Optional Peg Rate as the base rate for any loan approved after the effective date of this rule. In addition, for any loans outstanding with interest rates based on LIBOR, SBA recommends that Lenders review their loan documents to determine if the documents provide a fallback base rate (i.e., Prime or the Optional Peg Rate) without having to modify the loan documents. If there is no such flexibility, Lenders will need to work with Borrowers to modify their loan documents on an individual basis before LIBOR sunsets in 2021. Such modifications must be in compliance with the procedures set forth in the current versions of SBA Standard Operating Procedures 50 10 and 50 57. If such loans have been sold on the secondary market, Lenders will need to obtain the consent of investors to modify the base rate in the loan agreement. With only 3% of SBA's total portfolio of non-disaster business loans using LIBOR as a base rate, the process of phasing out LIBOR should not have a significant economic impact on a substantial number of small entities in SBA's business loan programs.

In addition, SBA is proposing to use loan amounts as the basis upon which the variable interest rate is set, instead of loan maturities. Paragraph (e) would be removed

and paragraph (d) would be revised to reflect the maximum variable interest rates for all 7(a) loans as follows:

(1) For all 7(a) loans of \$50,000 and less, the maximum interest rate shall not exceed six and a half (6.5) percentage points over the base rate;

(2) For all 7(a) loans greater than \$50,000 and up to and including \$250,000, the maximum interest rate shall not exceed six (6.0) percentage points over the base rate;

(3) For all 7(a) loans greater than \$250,000 and up to and including \$350,000, the maximum interest rate shall not exceed four and a half (4.5) percentage points over the base rate; and

(4) For all 7(a) loans greater than \$350,000, the maximum interest rate shall not exceed three (3.0) percentage points over the base rate.

By basing the rates on loan amounts and allowing Lenders to charge higher rates for smaller loans, Lenders would have more incentive to make smaller loans to businesses in need of credit on reasonable terms. Recent data shows that SBA loans up to \$150,000 have been declining over the last four years, and yet it is not uncommon for small businesses to max out their credit on credit cards or through financial technology companies (Fintech) where interest rates can range between 19-21% for credit cards and can exceed 45% for Fintech. Currently, the maximum variable interest rate that Lenders may charge is 2.25 percentage points over the base rate for loans with maturities of less than seven years and 2.75 percentage points over the base rate for loans with maturities of seven years or more, with an additional 2% more than these maximums for loans of \$25,000 or less and an additional 1% more than these maximums for loans over \$25,000 but not exceeding \$50,000. SBA expects that the incentive created by allowing Lenders to charge the higher interest rates proposed above, particularly for smaller loans, will encourage Lenders to make loans that they would not otherwise make, thereby increasing the availability to small businesses of needed credit at a more reasonable interest rate

with an SBA participating Lender. The proposed changes also recognize that, historically, smaller loans are riskier and have a higher default rate and, therefore, a higher maximum interest rate is warranted.

The maximum variable interest rates described above would apply to all types of 7(a) loans. Currently, the maximum variable interest rate that Lenders are permitted to charge may vary depending upon the type of 7(a) loan the Lender is making, i.e., SBA Express, Export Express, Community Advantage Pilot, or regular 7(a). By standardizing the maximum variable interest rates for all 7(a) loans, SBA is streamlining and simplifying its regulations, and reducing the burden on Lenders. If this rule is adopted, SBA Express and Export Express Lenders may continue to use, in accordance with the statutory authority of section 7(a)(31) and 7(a)(34) of the Small Business Act, respectively, the same base rates they use on their similarly-sized, non-SBA guaranteed commercial loans, as well as their established change intervals, payment accruals, and other interest rate terms. However, the interest rate must never exceed the maximum allowable interest rate stated in paragraph (d) of this section and these loans may be sold on the Secondary Market only if the base rate is one of the base rates allowed in § 120.214(c). In addition, if this rule is adopted, SBA will allow Community Advantage Lenders to charge the higher interest rate in paragraph (1) above for loans of \$50,000 or less (such Lenders can already charge 6 percentage points over the Prime rate for loans up to \$250,000, the maximum loan amount under the Community Advantage Pilot).

Other proposed changes to this section include removing the requirement in the introductory paragraph of § 120.214 that SBA's approval is required for a Lender to use a variable rate of interest. By removing this approval requirement, SBA is further streamlining its regulations. SBA is also proposing to amend the second sentence of the introductory paragraph of § 120.214 by moving it to § 120.214(d) and revising it to

clearly state that the initial maximum variable interest rate is determined as of the date that SBA received the loan application.

Section 120.215. SBA is proposing to remove this section, which establishes the interest rates for smaller loans. The interest rates for all 7(a) loans would be covered by § 120.213 and the proposed amendments to § 120.214.

Section 120.220. SBA is proposing two changes to this section. First, paragraph (a)(3) currently states that “[i]n fiscal years when the 7(a) program is at zero subsidy, SBA will not collect a guarantee fee in connection with a loan made under section 7(a)(31) of the Small Business Act to a business owned and controlled by a veteran or the spouse of a veteran.” This regulatory paragraph implements section 7(a)(31)(G) of the Small Business Act, which provides that the guarantee fee imposed by section 7(a)(18) of the Small Business Act is waived in connection with a loan made under the SBA Express Loan Program to a veteran or the spouse of a veteran except in any fiscal year in which the 7(a) program is not operating at zero subsidy. However, section 1102(d) of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136, 134 Stat. 281) removed the exception and, accordingly, SBA proposes to remove it from section 120.220(a)(3).

Second, paragraph (b) of this regulation establishes the deadlines for paying the SBA guaranty fee. For a loan with a maturity in excess of 12 months, this provision currently requires the Lender to pay the fee electronically within 90 days after SBA approval of the loan. In practice, SBA has been giving Lenders an additional 30 days to pay this fee, for a total of 120 calendar days after SBA loan approval, before cancelling the guarantee. With the efficiencies that have been created by electronic banking, SBA believes that these payments should be made in less time than 120 days and is proposing to require that the fee be paid within 45 days after loan approval. If the fee is not paid by the 45th day, SBA will give the Lender a grace period of an additional 30 days. If the fee

is not paid by the 75th day, SBA will cancel the guarantee. For loans with a maturity of 12 months or less, SBA will continue to cancel the guarantee if the fee is not paid by the 10th business day after the Lender receives SBA loan approval.

Section 120.222. SBA is proposing a technical correction to § 120.222 to remove an extra word (“in”) that was inserted in error.

Section 120.310. SBA is proposing to remove the reference to direct loans in this provision, which governs the Disabled Assistance Loan Program (“DAL”), to make this regulation consistent with section 7(a)(10) of the Small Business Act, which authorizes “guaranteed” loans under the DAL program, but not direct loans.

Section 120.315. SBA is proposing to remove this section in its entirety, which establishes the interest rate and limit on the loan amount with respect to direct DAL loans, to make this regulation consistent with section 7(a)(10) of the Small Business Act, which authorizes guaranteed loans only and not direct loans.

Section 120.320. SBA is proposing to remove this provision in its entirety. It references SBA’s authority under section 7(a)(11) of the Small Business Act to guarantee or make direct loans to businesses owned by low income individuals. However, direct loans have not been funded for over 30 years and this provision does not add anything to the general authority that SBA has under section 7(a) of the Small Business Act to make guaranteed loans to businesses owned by low income individuals.

Section 120.330. SBA is proposing to remove the reference to direct loans in this section because SBA has not received funding to make these loans for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency.

Sections 120.350 and 120.352. The regulations governing SBA guaranteed loans to qualified employee trusts or “Employee Stock Ownership Plans” (ESOPs) are set forth in §§ 120.350 through 120.354. SBA is proposing a technical amendment to both §

120.350 and § 120.352 to incorporate the statutory change made in Section 862 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) that permits SBA to guarantee a loan to the small business concern (rather than the qualified employee trust), if the proceeds from the loan are used only to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern. SBA is proposing this technical amendment in order to ensure that the regulations are consistent with the statute and to provide clarity to SBA Lenders and SBA employees with respect to guaranteed loans involving ESOPs. Additional guidance governing these loans will be provided in SOP 50 10.

Sections 120.360 and 120.361. SBA is proposing to remove these sections, which describe an outdated veteran's loan program for direct and guaranteed loans to Vietnam-era veterans and certain disabled veterans. SBA has not received funding to make direct 7(a) loans in the Veterans Loan Program for over 30 years and SBA's existing Loan Program Requirements provide special consideration for veteran-owned businesses. These regulations are, therefore, obsolete.

Section 120.370. SBA is proposing to remove this section, which describes SBA's authority under section 7(a)(12) of the Small Business Act to finance pollution control facilities, because the \$1 million cap set forth in section 7(a)(12)(B) for these pollution control loans was superseded when Congress raised the guaranty limit in section 7(a)(3) to \$3.75 million. In addition, this provision is otherwise unnecessary because SBA is authorized under the general authority of section 7(a) to make guaranteed loans for pollution control facilities.

Section 120.375. SBA is proposing to remove this section's reference to direct loans to firms participating in the 8(a) Program because direct loans have not been funded for over 30 years. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency.

Section 120.376. SBA is proposing to remove paragraph (a), the second sentence of paragraph (c), and paragraph (d), all of which describe requirements for direct loans or an immediate participation loan related to the loan program for participants in the 8(a) Program, for the same reasons expressed under the discussion of section 120.375 above. The remaining paragraphs would be redesignated accordingly.

Sections 120.380 through 120.383. SBA is proposing to remove these sections, which govern the program to provide defense economic transition assistance, because this program is no longer being funded. SBA believes that it may be confusing to the public to refer to such loans when they are not available from the Agency.

Section 120.420. SBA is proposing to remove paragraph (b), which defines “Bank Regulatory Agencies,” because this term is no longer used in part 120, and the term “Federal Financial Institution Regulator,” which is used instead, is defined in 13 CFR 120.10. The remaining paragraphs would be redesignated accordingly.

Section 120.432. SBA is proposing to amend § 120.432(a) to implement its longstanding policy of holding Assuming Institutions and investors responsible for the contingent liabilities (including repairs and denials) associated with 7(a) loans originated by failed insured depository institutions, whether the 7(a) loans are purchased by a Lender through a Federal Deposit Insurance Corporation (FDIC) loan sale or transferred to an Assuming Institution through a whole bank transfer.

SBA is proposing this modification to ensure consistent treatment of all portfolio loan transfers whether through voluntary bank mergers or asset sales, or through FDIC-led portfolio transfers following the failure of a Lender. SBA is also proposing to modify the regulatory language to include a statement that clarifies the applicability of the paragraph and the ability for the Agency to agree otherwise in writing (i.e., to affirm the validity of the guaranties). SBA also is proposing to modify the regulatory language to

remove the specific reference to the FDIC and make it applicable to all 7(a) loans purchased from any Federal or state banking regulator, any receiver, or any conservator.

Section 120.453. SBA is proposing to remove this section, which states that servicing and liquidation responsibilities for PLP Lenders are set forth in subpart E of part 120, as unnecessary. PLP Lenders are required to service and liquidate their loans in accordance with the same standards set forth in subpart E that are applied to non-delegated Lenders.

Section 120.470. SBA is proposing to revise paragraph (d)(1) of this provision by increasing the dollar amount that a small business lending company (SBLC) may disburse with the signature of only one bonded officer from \$1,000 to \$10,000, provided that such action is covered under the SBLC's fidelity bond. SBA believes this change would reduce burden on SBLCs without introducing significant risk to the program.

Section 120.532. SBA is proposing to remove this section, which refers to SBA's authority to assume a Borrower's obligation under terms and conditions set by SBA (see section 5(e) of the Small Business Act), because SBA does not use this authority and believes it may be confusing to the public for the regulations to refer to the availability of a loan moratorium under this section when it is not available from the Agency.

Section 120.540. Paragraph (g) of this section provides that a Lender may appeal an SBA office's decision, pertaining to an original or amended liquidation plan, to the Director of the Office of Financial Assistance (D/FA) within 30 days of the decision. The office within SBA that is now responsible for considering these appeals is the Office of Financial Program Operations (OFPO). Accordingly, SBA is proposing to amend this paragraph by replacing "D/FA" with "Director/Office of Financial Program Operations (D/OFPO)" where it first appears and with "D/OFPO" thereafter.

Section 120.542. Paragraph (d) of this section provides that a Lender may appeal an SBA decision to decline to reimburse all, or a portion, of the fees and/or costs incurred

in conducting liquidation to the D/FA, and that the decision of the D/FA (or designee) will be made in consultation with the Associate General Counsel for Litigation. The office within SBA that is now responsible for considering these appeals is OFPO. Accordingly, SBA is proposing to amend this paragraph by replacing “D/FA” with “D/OFPO” wherever it appears.

In addition, paragraph (e) of this section provides that a Lender may appeal a decision by SBA to decline to reimburse all, or a portion, of the legal fees and/or costs incurred in conducting debt collection litigation to the Associate General Counsel for Litigation. It further provides that the Associate General Counsel makes this decision in consultation with the D/FA. The office within SBA that is now responsible for consulting with the Associate General Counsel is OFPO. Accordingly, SBA is proposing to amend this paragraph by replacing “D/FA” with “D/OFPO”.

Section 120.701. SBA is proposing to remove paragraph (g) of this section, which defines “Non-lending technical assistance provider,” (NTAP) because SBA has not issued grant funds to NTAPs for many years. The remaining paragraph (h) would be redesignated accordingly.

Section 120.706. SBA proposes to revise paragraph (a) of this section to increase the maximum outstanding amount of loans that an Intermediary may borrow from SBA from \$5 million to \$6 million. This change incorporates the increase made by section 853(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, 15 U.S.C. 636(m)(3)(C).

Section 120.707. SBA is proposing to revise the regulation at § 120.707(b) to increase the maximum maturity of a loan from an Intermediary to a Microloan borrower from 6 years to 7 years. This change would allow for a longer repayment period for these small loans.

Section 120.712. In § 120.712(b), SBA is proposing to incorporate a recent statutory change to the percentage of grant funds that may be used by the Intermediary for marketing, managerial, and technical assistance to prospective Microloan borrowers. In § 120.712(d), SBA is proposing to incorporate a recent statutory change to the percentage of grant funds the Intermediary may use to contract with third parties to provide technical assistance to Microloan borrowers.

Section 120.714. SBA proposes to remove § 120.714, which describes how grants are made to non-lending technical assistance providers. SBA no longer makes such grants and there are no NTAPs currently participating in the Microloan Program. SBA is therefore proposing to eliminate this section to reduce confusion.

Section 120.715. SBA is proposing to remove this section, which describes the Deferred Participation Loan Pilot, under which SBA was authorized to guarantee a loan that an Intermediary in the Microloan Program obtained from another source. SBA proposes to remove § 120.715 in its entirety as this pilot expired in Fiscal Year 2000 and SBA no longer has the authority to guarantee such loans.

Section 120.800. SBA is proposing to remove this section, which describes the purpose of the 504 program, because it is unnecessary. The 504 Loan Program is described in § 120.2(c).

Section 120.812. SBA is proposing to revise paragraph (a)(2) to provide that a newly certified CDC may petition for more than a single one-year extension of probation. In addition, SBA is proposing to revise paragraph (d) to clarify that, if SBA declines the CDC's petition for permanent status, the CDC will no longer have authority to participate in the 504 Loan Program and SBA will direct the CDC to transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

Section 120.840. SBA is proposing to make a technical correction to § 120.840(b) by replacing the reference in this section to the Director, Office of Financial

Assistance with “appropriate SBA official in accordance with Delegations of Authority.” In addition, SBA is proposing to revise § 120.840(b) to reflect the modernized application submission process for ALP, which will allow CDCs to submit ALP applications electronically into the Corporate Governance Repository, rather than apply to the Lead SBA Office.

Section 120.845. Paragraph (c)(1) of this section, which sets forth the eligibility criteria for the Premier Certified Lenders Program, refers to the criteria that are listed for the Accredited Lenders Program in § 120.841(a) through (h). However, the criteria are listed only in § 120.841(a) through (f). SBA is proposing, therefore, to amend paragraph (c)(1) by removing “through (h)” at the end of the sentence and adding “through (f)” in its place.

Section 120.850. SBA is proposing to remove this section because the designation of Associate Development Company ceased to exist on January 1, 2004.

Section 120.862. SBA is proposing to amend paragraph (b) by adding the three energy public policy goals described in paragraphs (I), (J) and (K) of section 501(d)(3) of the Small Business Investment Act of 1958, as amended, to the list of economic development objectives. These three goals relate to the reduction of energy consumption by at least 10 percent, the increased use of sustainable design, and plant, equipment and process upgrades of renewable energy sources. This change would make the regulations consistent with the statute.

Section 120.1400. Under current 13 CFR 120.1400(a), a CDC that obtains approval for 504 loans after October 20, 2017, and an SBA Supervised Lender that makes 7(a) guaranteed loans after October 20, 2017, consent to the applicable receivership remedies in 13 CFR 120.1500(c). Pursuant to SOP 50 10 5(J), SBA deemed the consent by a CDC under 13 CFR 120.1400(a)(1), and the consent by an SBA Supervised Lender under 13 CFR 120.1400(a)(2), to take effect on January 1, 2018, which was the effective

date of the SOP 50 10 5(J). The proposed amendments to this rule would codify the SOP provision into the rule. The amendments to these paragraphs would also clarify that the CDC's or the SBA Supervised Lender's consent does not preclude them from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership.

Section 120.1500. SBA is proposing to amend paragraphs (c)(3) and (e)(3) to incorporate into the regulations the factors set forth in the current SOP 50 10 that SBA considers when seeking the appointment of a receiver and the scope of the receivership. The appointment of a receiver is only one of several types of enforcement actions set forth in 13 CFR 120.1500, and typically, SBA will use its receivership authority as a remedy of last resort. The proposed factors vary slightly depending upon the type of SBA Lender and whether the SBA Lender has assets unrelated to SBA loan program activities.

Section 123.17. SBA is proposing to amend this section to remove the reference to lead-based paint. As stated above, SBA is proposing to remove § 120.173, Lead-based paint, which prohibits the use of lead-based paint if loan proceeds are for the construction or rehabilitation of a residential structure. That section is unnecessary because 16 CFR part 1303 already bans paint containing a concentration of lead in excess of 0.009% (90 parts per million) for use in residences, schools, hospitals, parks, playgrounds, and public buildings or other areas where consumers will have direct access to the painted surface. Removing the reference to lead-based paint in § 123.17 conforms this regulation to the removal of § 120.173 and will avoid confusion.

Compliance with Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule does not constitute a “significant regulatory action” under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have preemptive effect or retroactive effect.

Executive Order 13132

SBA has determined that this proposed rule would not have federalism implications as defined in Executive Order 13132. It would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule does not warrant the preparation of a Federalism Assessment.

Executive Order 13563

As discussed above, SBA received a significant number of public comments in response to the *Federal Register* document requesting the public’s input.

Executive Order 13771

The designation, as regulatory or deregulatory under EO 13771, of any final rule resulting from the notice of proposed rulemaking will be informed by comments received. Details on the preliminary estimates of costs and cost savings are below.

This proposed rule is expected to be an Executive Order 13771 deregulatory action with an annualized net savings of \$358,724 and a net present value of \$5,125,645

in savings, both in 2016 dollars.¹ This rule is a comprehensive effort to remove regulations that are confusing, misleading, or unnecessary, as well as to make various technical amendments and other changes to clarify and streamline the program, including: removing language about immediate participation loans and direct loans because SBA has not received funding for immediate participation or direct loans for over 30 years, removing information about a pilot program that has expired, removing references to grant funds that are no longer provided, and removing the reference to SBA's authority to assume a Borrower's loan obligations under a loan moratorium. The removal of these regulations will save Lenders and loan applicants time reading, researching, and inquiring about these obsolete or inactive programs and reduce confusion around whether they exist.

For each year between FY 2015 and FY 2019, SBA estimates that approximately 2,161 active 7(a) Lenders, CDCs, and Microloan Intermediaries could have potentially read about these programs in the regulations. Assuming that 20 percent (432) of these Lenders would read about the program in the regulations and that each would save two hours from not reading the removed information or researching/inquiring about obsolete programs, this would be 864 reduced hours of burden. Valuing this time at \$124.90 per hour (the median wage of a financial manager based on 2019 Bureau of Labor Statistics (BLS) data and adding 100% more for benefits and overhead), this produces total savings per year of \$107,914 in current dollars. These savings would be expected to continue into perpetuity.

In addition, some percentage of Borrowers would read about the program in the regulation and each would save approximately two hours from not reading the removed information, researching, or inquiring about the program. Assuming 2 percent of the

¹ The net present value was calculated using the annualized savings discounted by 7% over a perpetual time horizon based in 2016 dollars.

331,533 Borrowers with active loans would read the regulation (or about 6,630), this represents a total of 13,260 hours of burden reduced. Valuing this time at \$38.28 per hour (the median wage of the general population based on 2019 BLS data and adding 100% more for benefits and overhead), this produces total savings per year of \$507,593 in current dollars. These savings would be expected to continue into perpetuity.

In addition to these quantifiable benefits, there are several benefits of this rule that are unquantifiable. For instance, SBA is proposing to increase the dollar amount that an SBLC may disburse with the signature of only one bonded officer from \$1,000 to \$10,000, provided that such action is covered under the SBLC's fidelity bond. SBA believes this change would reduce burden on SBLCs without introducing significant risk to the program.

Further, SBA is proposing to allow a Lender to add a reasonable period, not to exceed 12 months, to the loan term when necessary to complete the installation of equipment and/or complete leasehold improvements. It is difficult to estimate how many Lenders will utilize this flexibility or how many Borrowers will require it, but the added flexibility is a benefit to Borrowers.

SBA proposes to increase the maximum outstanding amount of SBA loans that an Intermediary may borrow from \$5 million to \$6 million. This change incorporates the increase made by section 853(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, 15 U.S.C. 636(m)(3)(C) and is a benefit for Intermediaries.

SBA does not anticipate many Borrowers will be affected by the removal of LIBOR as an optional base rate for variable rate SBA business loans, but there will be some unavoidable cost associated with its sunset. SBA estimates the percentage of loans affected by the change to be 3% of the approximately 331,533 active SBA business loans, or about 9,946 loans. We assume the terms of all these loans will need to be updated, which is a conservative estimate, and that this will create an hour of burden for both a

financial manager and a Borrower. Estimating the value of the financial manager's time at \$124.90 per hour (the median wage of a financial manager based on 2019 BLS wage data and adding 100% for benefits and overhead) and valuing the Borrower's time at \$38.28 per hour (the median wage of the general population based on 2018 BLS data and adding 100% more for benefits and overhead), this produces a burden of \$1,622,988 in the first year that LIBOR is discontinued and would not be repeated in subsequent years. It is important to note that, because LIBOR is being phased-out by the U.K. Financial Conduct Authority, these costs will be incurred regardless of whether or not SBA removes the reference to LIBOR in its regulations.

Additionally, SBA is proposing to use loan amounts as the basis upon which the variable interest rate is set instead of using loan maturities for all 7(a) loans. SBA is proposing to apply the new variable interest rate maximums to all 7(a) loans. Currently, approximately 22% of 7(a) loans charge the maximum variable interest rate so increasing the maximum allowable interest rate is unlikely to cause the other 78% to increase their rates. It is difficult to speculate what proportion of the 22% that currently charge the maximum allowable interest rate will increase their rates, but the forces of the competitive marketplace will limit their ability to charge significantly higher rates, making the new rate maximums unlikely to create a significant cost for Borrowers. Also, it is not uncommon for small businesses to max out their credit on credit cards or through financial technology companies (Fintech) where interest rates can range between 19-21% for credit cards and can exceed 45% for Fintech, and SBA loans would be a more reasonable alternative with the proposed maximum rates in this rule.

Due to efficiencies that have been created by electronic banking, SBA believes that payments should be made in less time and is proposing to require that the SBA guaranty fee be paid within 45 days after loan approval. This change is not expected to

create any additional burden for Lenders since they make electronic payments now and should be able to easily comply with the proposed timeframe.

Lastly, SBA is proposing to remove the exception related to the guarantee fee that is collected from veterans or from the spouse of a veteran on Express Loans. The guarantee fee on these loans is waived for veterans and their spouses in fiscal years when the 7(a) program is at zero subsidy, but there was a statutory exception to this waiver for fiscal years when the 7(a) program is not at zero subsidy. Section 1102(d) of the CARES Act eliminated this exception and, accordingly, SBA is proposing to remove this exception to conform the regulations to the statutory change. SBA considers this proposed change a transfer of the cost for the 7(a) loan program which will not affect the total resources available to loan participants. The fees collected from participants in the loan program are set at the amounts needed to cover the cost of the program, but are capped at a statutory limit which can result in periods when the program is operating in positive subsidy. The proposed change will transfer the cost of the service away from veterans and their spouses to non-veteran participants or SBA, resulting in either increased fees for nonveterans, or will require appropriations to subsidize the operations of the program. Thus, the elimination of guarantee fees for veterans and their spouses will result in a distributional shift and will not cause a new cost to society.

Table 1 displays the savings and costs of this rule over the first two years it is effective, with the savings and costs in the second year expected to continue into perpetuity. Table 2 presents the annualized net savings in 2016 dollars.

Table 1. Schedule of Costs/(Savings) Over 2 Year Horizon, Current Dollars

	Savings	Costs
Year 1	\$ (615,506)	\$1,622,988
Year 2	\$ (615,506)	\$0

Table 2: Annualized Savings in Perpetuity with 7% Discount Rate, 2016 Dollars

	Estimate
Annualized Savings	\$ (433,505)
Annualized Costs	\$ 74,781
Annualized Net Savings	\$ (358,724)

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule would not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act, 5 U.S.C. 601-612

When an agency issues a proposed rule, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule is a comprehensive effort to remove information from the regulations that are confusing and misleading, which would save Lenders and Borrowers time in reading and inquiring about obsolete or inaccurate information. SBA estimates the total annual savings to Lenders and Borrowers to be \$615,506 in current dollars, as detailed in the Executive Order 13771 section above.

In addition, there are some costs associated with this rule that could impact small businesses. The removal of LIBOR as an optional base rate for variable rate 7(a) loans will cause some Borrowers to modify their loan documents to specify a new base rate. Any costs associated with modifying loan documents are an unavoidable result of the phase-out of LIBOR that will occur in 2021. SBA estimates only 3% of active SBA business loans could be affected by this change and that the burden created would be

\$1,622,988 in the first year that LIBOR is discontinued and would not be repeated in subsequent years, as detailed in the Executive Order 13771 section above.

The annualized net savings of this rule is estimated to be \$358,724 in 2016 dollars. Given that savings would be spread out to approximately 7,000 beneficiaries (Lenders and Borrowers), this does not create a significant savings per beneficiary.

Based on the foregoing, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The SBA invites comments from the public on this certification.

List of Subjects

13 CFR Part 120

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

13 CFR Part 123

Disaster assistance, Loan programs-business, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 120 and 123 as follows:

PART 120--BUSINESS LOANS

1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), and note, 650, 657t, and note, 657u, and note, 687(f), 696(3) and (7), and note, and 697(a) and (e), and note.

2. Amend § 120.2 by revising paragraph (a)(1) to read as follows:

§ 120.2 Descriptions of the business loan programs.

(a) * * *

(1) SBA makes a guaranteed (deferred participation) loan by which SBA guarantees a portion of a loan made by a Lender to provide financing for general business purposes.

* * * * *

3. Amend § 120.10 by revising the first sentence of the definition of “Risk Rating” to read as follows:

§ 120.10 Definitions.

* * * * *

Risk Rating is an SBA internal composite rating assigned to individual SBA Lenders and Intermediaries that reflects the risk associated with the SBA Lender’s or Intermediary’s portfolio of SBA loans. * * *

* * * * *

§ 120.103 [Removed]

4. Remove § 120.103.

5. Amend § 120.110 by revising paragraph (h), removing and reserving paragraph (k), and revising paragraph (n).

The revisions read as follows:

§ 120.110 What businesses are ineligible for SBA business loans?

* * * * *

(h) Businesses engaged in any activity that is illegal under Federal, State, or local law;

* * * * *

(n) Businesses with an Associate who is incarcerated, on probation, on parole, or is under indictment for a felony or any crime involving or relating to financial misconduct or a false statement;

* * * * *

§ 120.111 [Amended]

6. Amend § 120.111 by removing the last sentence of the introductory text.

7. Amend § 120.120 by revising paragraph (a)(1) to read as follows:

§ 120.120 What are eligible uses of proceeds?

* * * * *

(a) * * *

(1) Acquire land (by purchase or lease) that will be actively used in the applicant's business operations (except that a Borrower may lease a portion of the property in accordance with 13 CFR 120.131 and 120.870(b));

* * * * *

§ 120.173 [Removed and Reserved]

8. Remove and reserve § 120.173.

§ 120.190 [Amended]

9. Amend § 120.190 by:

- a. Removing "or immediate participation" from paragraph (a);
- b. Adding "or" at the end of paragraph (b);
- c. Removing "; or" at the end of paragraph (c) and adding in its place a period;

and

d. Removing paragraph (d).

§ 120.192 [Amended]

10. Amend § 120.192 by removing the phrase "CDC, Intermediary, or SBA," and adding in its place the phrase "CDC or Intermediary,".

§ 120.211 [Removed and Reserved]

11. Remove and reserve § 120.211.

12. Amend § 120.212 by revising paragraph (b) to read as follows:

§ 120.212 What limits are there on loan maturities?

* * * * *

(b) Ten years or less, unless it finances or refinances real estate or equipment with a useful life exceeding ten years. The term for a loan to finance equipment and/or

leasehold improvements may include an additional reasonable period, not to exceed 12 months, when necessary to complete the installation of the equipment and/or complete the leasehold improvements.

* * * * *

13. Revise § 120.213 to read as follows:

§ 120.213 What fixed interest rates may a Lender charge?

A guaranteed loan may have a reasonable fixed interest rate, but in no event may the rate exceed the maximum allowable rate periodically published by SBA in the *Federal Register*.

14. Amend § 120.214 by:

- a. Revising the introductory text, the first and second sentences of paragraph (c), and paragraph (d);
- b. Removing paragraph (e); and
- c. Redesignating paragraph (f) as paragraph (e).

The revisions read as follows:

§ 120.214 What conditions apply for variable interest rates?

A Lender may use a variable rate of interest for guaranteed loans under the following conditions:

* * * * *

(c) * * * The base rate will be one of the following: the prime rate or the Optional Peg Rate. The prime rate will be that which is in effect on the first business day of the month, as printed in a national financial newspaper published each business day. * * *

(d) *Maximum allowable variable interest rates.* The maximum allowable variable interest rates are set forth in this paragraph (d), with the initial maximum allowable rate for the loan determined as of the date SBA receives the loan application:

(1) For all 7(a) loans of \$50,000 and less, the interest rate shall not exceed six and a half (6.5) percentage points over the base rate;

(2) For all 7(a) loans of more than \$50,000 and up to and including \$250,000, the maximum interest rate shall not exceed six (6.0) percentage points over the base rate;

(3) For all 7(a) loans of more than \$250,000 and up to and including \$350,000, the maximum interest rate shall not exceed four and a half (4.5) percentage points over the base rate; and

(4) For all 7(a) loans of more than \$350,000, the maximum interest rate shall not exceed three (3.0) percentage points over the base rate.

* * * * *

§ 120.215 [Removed]

15. Remove § 120.215.

16. Amend § 120.220 by:

a. Removing the phrase “In fiscal years when the 7(a) program is at zero subsidy,” in paragraph (a)(3).

b. Removing the number “90” and add in its place the number “45” in paragraph (b); and

c. Adding a subject heading and revising the first sentence of paragraph (e).

The revision to read as follows:

§ 120.220 Fees that Lender pays SBA.

* * * * *

(e) *Termination of guarantee for nonpayment of fee and other matters.* If the guarantee fee is not paid by the 75th calendar day after loan approval for a loan with a maturity in excess of twelve (12) months, or is not paid by the 10th business day after loan approval for a loan with a maturity of twelve (12) months or less, SBA will terminate the guarantee. * * *

* * * * *

§ 120.222 [Amended]

17. Amend § 120.222 by removing the word “in” before the words “any premium received”.

§ 120.310 [Amended]

17. Amend § 120.310 in the introductory text by removing the phrase “or make direct”.

§ 120.315 [Removed]

18. Remove § 120.315.

§ 120.320 [Removed]

19. Remove the undesignated center heading “Businesses Owned by Low Income Individuals” and § 120.320.

§ 120.330 [Amended]

20. Amend § 120.330 by removing the phrase “make or”.

21. Revise § 120.350 to read as follows:

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a:

(a) Qualified employee trust (“ESOP”) to:

(1) Help finance the growth of its employer’s small business; or

(2) Purchase ownership or voting control of the employer; and a

(b) Small business concern, if the proceeds from the loan are only used to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern.

22. Revise § 120.352 to read as follows:

§ 120.352 Use of proceeds.

Loan proceeds may be used for:

(a) *Qualified employee trust.* A qualified employee trust may use loan proceeds for two purposes:

(1) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer securities. The small business concern may use these funds for any general 7(a) purpose.

(2) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

(b) *Small business concern.* A small business concern may only use loan proceeds to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern.

§§ 120.360, 120.361, and 120.370 [Removed]

23. Remove the undesignated center heading “Veterans Loan Program”, §§ 120.360 and 120.361, the undesignated center heading “Pollution Control Program”, and § 120.370.

§ 120.375 [Amended]

24. Amend § 120.375 by removing the phrase “direct (unilaterally or together with Lenders) or”.

§ 120.376 [Amended]

25. Amend § 120.376 by:

- a. Removing paragraph (a);
- b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b);
- c. Removing the second sentence of newly redesignated paragraph (b); and
- d. Removing paragraph (d).

§§ 120.380 through 120.383 [Removed]

26. Remove the undesignated center heading “Defense Economic Transition Assistance” and §§ 120.380 through 120.383.

§ 120.420 [Amended]

27. Amend § 120.420 by removing paragraph (b) and redesignating paragraphs (c) through (k) as paragraphs (b) through (j).

28. Amend § 120.432 by adding a sentence at the end of paragraph (a) to read as follows:

§ 120.432 Under what circumstances does this subpart permit sales of, or sales of participating interests in, 7(a) loans?

(a) * * * This paragraph (a) applies to all 7(a) loans purchased from any Federal or state banking regulator, any receiver, or any conservator, unless SBA agrees otherwise in writing.

* * * * *

§ 120.453 [Removed]

29. Remove § 120.453.

§ 120.470 [Amended]

30. Amend § 120.470 in paragraph (d)(1) by removing the number “\$1,000” and adding the number “\$10,000” in its place.

§ 120.532 [Removed]

31. Remove § 120.532.

§ 120.540 [Amended]

32. Amend § 120.540 in paragraph (g) by removing the term “D/FA” from the first sentence and adding in its place the phrase “Director/Office of Financial Program Operations (D/OFPO)” and by removing the term “D/FA” from the second and fourth sentences and adding in its place the term “D/OFPO”.

§ 120.542 [Amended]

33. Amend § 120.542 in paragraphs (d) and (e) by removing the term “D/FA” wherever it appears and adding in its place the term “D/OFPO”.

§ 120.701 [Amended]

34. Amend § 120.701 by removing the paragraph designations (a) through (h), leaving the definitions in alphabetical order, and removing the definition of “Non-lending technical assistance provider”.

§ 120.706 [Amended]

35. Amend § 120.706 in the last sentence of paragraph (a) by removing “\$5 million” and adding in its place “\$6 million”.

§ 120.707 [Amended]

36. Amend § 120.707 in the last sentence of paragraph (b) by removing the word “six” and adding in its place the word “seven”.

37. Amend § 120.712 by:

a. Revising paragraph (b)(1); and

b. Removing the number “30” and adding in its place the number “50” in paragraph (d).

The revision reads as follows:

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

* * * * *

(b) * * *

(1) Up to 50 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; provided, however, that no more than 5 percent of the grant funds may be used to market or advertise the products and services of the Microloan Intermediary directly related to the Microloan Program; and

* * * * *

§§ 120.714 and 120.715 [Removed]

38. Remove and reserve §§ 120.714 and 120.715.

§ 120.800 [Removed]

39. Remove § 120.800.

40. Amend § 120.812 by revising paragraph (a)(2) and by adding a sentence at the end of paragraph (d) to read as follows:

§ 120.812 Probationary period for newly certified CDCs.

(a) * * *

(2) A one-year extension of probation. If a one-year extension of probation is granted, at the end of this extension period, the CDC must petition the Lead SBA Office for permanent CDC status or an additional one-year extension of probation.

* * * * *

(d) * * * If SBA declines the petition, the CDC will no longer have authority to participate in the 504 Loan Program and SBA will direct the CDC to transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

41. Amend § 120.840 by revising paragraph (b) to read as follows:

§ 120.840 Accredited Lenders Program (ALP).

* * * * *

(b) *Application.* A CDC must apply for ALP status by submitting an application in accordance with SBA's Standard Operating Procedure 50 10, available at <http://www.sba.gov>. A final decision will be made by the appropriate SBA official in accordance with Delegations of Authority.

* * * * *

§ 120.845 [Amended]

42. Amend § 120.845 in paragraph (c)(1) by removing the phrase "through (h)" and adding in its place the phrase "through (f)".

§ 120.850 [Removed]

43. Remove the undesignated center heading “Associate Development Companies (ADCs)” and § 120.850.

44. Amend § 120.862 by:

a. Removing “or” at the end of paragraph (b)(9);

b. Removing the period at the end of paragraph (b)(10) and adding “;” in its place; and

c. Adding paragraphs (b)(11) through (13).

The additions read as follows:

§120.862 Other economic development objectives.

* * * * *

(b) * * *

(11) Reduction of energy consumption by at least 10 percent;

(12) Increased use of sustainable design, including designs that reduce the use of greenhouse gas emitting fossil fuels, or low-impact design to produce buildings that reduce the use of non-renewable resources and minimize environmental impact; or

(13) Plant, equipment and process upgrades of renewable energy sources such as the small-scale production of energy for individual buildings’ or communities’ consumption, commonly known as micropower, or renewable fuels producers including biodiesel and ethanol producers.

45. Amend 120.1400 by:

a. Removing the date “October 20, 2017” in paragraphs (a)(1) and (2) and adding in their place the date “January 1, 2018”; and

b. Adding two sentences to the end of paragraphs (a)(1) and (2).

The additions read as follows:

§ 120.1400 Grounds for enforcement actions—SBA Lenders.

(a) * * *

(1) * * * The CDC's consent does not preclude the CDC from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership. A CDC's consent to receivership as a remedy does not require SBA to seek appointment of a receiver in any particular SBA enforcement action.

(2) * * * The SBA Supervised Lender's consent does not preclude such Lender from contesting whether or not SBA has established the grounds for seeking the remedy of a receivership. The SBA Supervised Lender's consent to receivership as a remedy does not require SBA to seek appointment of a receiver in any particular SBA enforcement action.

* * * * *

46. Amend § 120.1500 by adding a sentence at the end of paragraph (c)(3), adding paragraphs (c)(3)(i) and (ii), and adding two sentences after the first sentence of paragraph (e)(3) to read as follows:

§ 120.1500 Types of enforcement actions—SBA Lenders.

* * * * *

(c) * * *

(3) * * * In deciding whether to seek the appointment of a receiver and in determining the scope of a receivership, SBA will consider the following factors, in its discretion:

(i) For NFRLs:

(A) The existence of fraud or false statements;

(B) The NFRL's refusal to cooperate with SBA enforcement action instructions or orders;

(C) The NFRL's insolvency (legal or equitable);

(D) The size of the NFRL's SBA loan portfolio(s) in relation to other activities of the NFRL;

(E) The dollar amount of any claims SBA may have against the NFRL;

(F) The NFRL's failure to comply materially with any requirement imposed by Loan Program Requirements; and/or

(G) The existence of other non-SBA enforcement actions against the NFRL;

(ii) For SBLCs:

(A) The existence of fraud or false statements;

(B) The SBLC's refusal to cooperate with SBA enforcement action instructions or orders;

(C) The SBLC's insolvency (legal or equitable);

(D) The dollar amount of any claims SBA may have against the SBLC; and/or

(E) The SBLC's failure to comply materially with any requirement imposed by Loan Program Requirements.

* * * * *

(e) * * *

(3) * * * SBA will limit the scope of the receivership to the CDC's assets related to the SBA loan program(s) except where the CDC's business is almost exclusively SBA-related. SBA will only seek a receivership if there is either the existence of fraud or false statements, or if the CDC has refused to cooperate with SBA enforcement action instructions or orders. * * *

PART 123 – DISASTER LOAN PROGRAM

47. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), and 657n.

§ 123.17 [Amended]

48. Amend § 123.17 by removing the words "lead-based paint,".

Jovita Carranza,
Administrator.

[FR Doc. 2020-26446 Filed: 12/11/2020 8:45 am; Publication Date: 12/14/2020]