

payments of 504 loans. At SBA's direction, the CSA may use funds in the master reserve account to defray program expenses. In the event a Borrower defaults and its 504 note is accelerated, SBA shall add funds under its guarantee to ensure the full and timely payment of the Debenture which funded the 504 loan. At SBA's direction, the CSA must pay to the CDC servicing each loan the interest accruing in the master reserve account on loan payments made by each Borrower between the date of receipt of each monthly payment and the date of disbursement to investors. The CSA may disburse such interest periodically to CDCs on a pro rata basis. SBA may use interest accruals in the master reserve account earned prior to October 1991 (not previously distributed to the CDCs) for the costs of 504 program administration.

**§ 120.955 Agent bonds and records.**

(a) Each agent (in §§ 120.951 through 120.954) must provide a fidelity bond or insurance in such amount as necessary to fully protect the interest of the government.

(b) SBA must have access at the agent's place of business to all books, records and other documents relating to Debenture activities.

**§ 120.956 Suspension or revocation of brokers and dealers.**

The AA/FA may suspend or revoke the privilege of any broker or dealer to participate in the sale or marketing of Debentures and Certificates for actions or conduct bearing negatively on the broker's fitness to participate in the securities market. SBA must give the broker or dealer written notice, stating the reasons therefore, at least 10 business days prior to the effective date of the suspension or revocation. A broker or dealer may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the AA/FA will remain in effect pending resolution of the appeal. SBA may suspend or revoke the opportunity for a hearing under part 134 of this chapter.

CLOSINGS

**§ 120.960 Responsibility for closing.**

The CDC is responsible for the 504 Loan closing. The Debenture closing is the joint responsibility of the CDC and SBA.

**§ 120.961 Construction escrow accounts.**

The CSA, title company, CDC attorney, or bank may hold Debenture proceeds in escrow to complete Project components such as landscaping and parking lots, and acquire machinery and equipment if the component or acquisition is a minor portion of the total Project and has been contracted for completion or delivery at a specified price and specific future date. The escrow agent must disburse funds upon approval by the CDC and the SBA, supported by invoices and payable jointly to the small business and the designated contractor.

SERVICING AND FEES

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

The CDC must service the 504 loan in accordance with the Loan Authorization, these regulations, SBA policies and procedures, and prudent lending standards until paid in full, including review of the small business's financial statements, tax filings, insurance, and security filings. In doing so, CDCs must comply with the provisions of § 120.513. In addition, CDCs must comply with the servicing requirements set forth in SBA's SOP. CDCs must report promptly to SBA any adverse trend, condition or information relevant to a Borrower. Upon request by a CDC, SBA may agree to defer a Borrower's monthly payment. SBA may negotiate agreements with CDCs to liquidate loans.

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

(a) *CDC fees.* CDCs may charge the following fees to the Borrower:

(1) *Processing fee.* The CDC may charge up to 1.5 percent of the net Debenture proceeds to process the financing. Two-thirds of this fee will be considered earned and may be collected by the CDC when the Authorization for

the Debenture is issued by SBA. The portion of the processing fee paid by the Borrower may be reimbursed from the Debenture proceeds;

(2) *Closing fee.* The CDC may charge a fee to cover an amount sufficient to reimburse it for reasonable legal expenses of in-house or outside legal counsel. The CDC may also charge a fee to cover reasonable miscellaneous closing costs. Closing costs, other than legal fees, may be funded out of the Debenture proceeds;

(3) *Servicing fee.* The CDC will charge a monthly servicing fee of not less than 0.5 percent per annum nor more than 2 percent per annum on the unpaid balance of the loan as determined at five-year anniversary intervals. A servicing fee in excess of 1.5 percent in a Rural Area and 1 percent everywhere else requires SBA's prior written approval, based on evidence of substantial need. The servicing fee may be paid only from loan payments received. The fees may be accrued without interest and collected from the CSA when the payments are made;

(4) *Late fees.* Loan payments received after the 15th of each month may be subject to a late payment fee of 5 percent of the late payment or \$100, whichever is greater. These fees will be collected by the CSA on behalf of the CDC; and

(5) *Assumption fee.* Upon SBA's written approval, a CDC may charge an assumption fee not to exceed 1 percent of the outstanding principal balance of the loan being assumed.

(b) *CSA fees.* The CSA may charge an initiation fee on each loan and a monthly servicing fee under the terms of the Master Servicing Agreement.

(c) *Other agent fees.* Agent fees and charges necessary to market and service Debentures and Certificates may be assessed to the Borrower or the investor. The fees must be approved by SBA and published periodically in the FEDERAL REGISTER.

(d) *SBA fees.* (1) SBA charges a 0.5 percent guarantee fee on the Debenture.

(2) For those loans approved after October 1, 1995, SBA charges a fee of 0.125 per annum on the unpaid principal balance of the loan as determined at five-year anniversary intervals.

(e) *Miscellaneous fees.* A funding fee not to exceed 0.25 percent of the Debenture may be charged to cover costs incurred by the trustee, fiscal agent, transfer agent.

#### **§ 120.972 Oversight and evaluation of CDCs and ADCs.**

SBA may conduct an operational review of a CDC or ADC. The SBA Office of Inspector General may conduct, supervise or coordinate audits pursuant to the Inspector General Act. The CDC or ADC must cooperate and make its staff, records, and facilities available.

#### CDC TRANSFER, SUSPENSION AND REVOCATION

#### **§ 120.980 Transfer of CDC to ADC status.**

SBA shall transfer to ADC status any CDC that fails to meet the activity level required by SBA, on average over two consecutive fiscal years. SBA shall notify the CDC in writing of the action and of the opportunity for a hearing pursuant to part 134 of this chapter at least 10 business days prior to the transfer. During the pendency of a hearing, SBA's action will remain in effect.

#### **§ 120.981 Voluntary transfer and surrender of CDC certification.**

A CDC may not transfer its certification or withdraw from the 504 program without SBA's consent. The CDC must provide a plan to SBA to transfer its portfolio. The portfolio may only be transferred with SBA's written consent. If a CDC desires to withdraw from the 504 program, it must forfeit its portfolio to SBA. SBA may conduct an audit of the transferring or withdrawing CDC.

#### **§ 120.982 Correcting CDC servicing deficiencies.**

SBA may require corrective action, including the transfer of existing or pending financings to another CDC in good standing. SBA must notify the CDC in writing of any servicing, reporting or collection deficiencies and the corrective actions to be taken. SBA may instruct the CSA to withhold service and late fees and may assess the