

## § 120.883

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

The following administrative costs are not part of Project costs, but may be paid with the proceeds of the 504 loan and the Debenture (see § 120.971):

- (a) SBA guarantee fee;
- (b) Funding fee (to cover the cost of a public issuance of securities and the Trustee);
- (c) CDC processing fee;
- (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;
- (e) CDC Closing Fee (see § 120.971(a)(2)) up to a maximum of \$2,500; and
- (f) Underwriters' fee.

[64 FR 2118, Jan. 13, 1999, as amended at 68 FR 57987, Oct. 7, 2003]

### § 120.884 Ineligible costs for 504 loans.

Costs not directly attributable and necessary for the Project may not be paid with proceeds of the 504 loan. These include, but are not limited to, the following:

- (a) Debt refinancing (other than interim financing), except as provided in § 120.882(e).
- (b) A CDC may not use 504 loan proceeds to pay any creditor in a position to sustain a loss causing a shift to SBA of all or part of a potential loss from an existing debt.
- (c) Third-Party Loan fees (commitment, broker, finders, origination, processing fees of permanent financing).
- (d) Ancillary business expenses, such as:
  - (1) Working capital;
  - (2) Counseling or management services fees;
  - (3) Incorporation/organization costs;
  - (4) Franchise fees; and
  - (5) Advertising.
- (e) Fixed-asset Project components, such as:
  - (1) Short-term equipment, furniture, and furnishings (unless essential to and a minor portion of the Project);
  - (2) Automobiles, trucks, and airplanes; and

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(3) Construction equipment (except for heavy duty construction equipment integral to a business' operations and meeting the IRS definition of capital equipment).

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2118, Jan. 13, 1999; 74 FR 29591, June 23, 2009]

### INTERIM FINANCING

#### § 120.890 Source of interim financing.

A Project may use interim financing for all Project costs except the Borrower's contribution. Any source (including a CDC) may supply interim financing provided:

- (a) The financing is not derived from any SBA program, directly or indirectly;
- (b) The terms and conditions of the financing are acceptable to SBA;
- (c) The source is not the Borrower or an Associate of the Borrower; and
- (d) The source has the experience and qualifications to monitor properly all Project construction and progress payments. (If the source lacks such experience or qualifications, SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager.)

#### § 120.891 Certifications of disbursement and completion.

Before the Debenture is issued, the interim lender must certify the amount disbursed. The CDC must certify that the Project was completed in accordance with the final plans and specifications (except as provided in § 120.961).

#### § 120.892 Certifications of no adverse change.

Following completion of the Project, the following certifications must be made before the 504 loan closing:

- (a) The interim lender must certify to the CDC that it has no knowledge of any unremedied substantial adverse change in the condition of the small business since the application to the interim lender;
- (b) The Borrower (or Operating Company) must certify to the CDC that there has been no unremedied substantial adverse change in its financial condition or its ability to repay the 504