''original loan'') and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy this paragraph (iii). If the original loan was for the construction of a new building, or the acquisition, renovation, or reconstruction of an existing building, and such loan would not have satisfied the leasing policies set forth in 13 CFR 120.131 and 13 CFR 120.870(b), the current commercial loan will be deemed to satisfy these policies, provided that Borrower demonstrates compliance with 13 CFR 120.131(b) for existing buildings as of the date of application.

(iv) That was for the benefit of the small business concern;

(v) That is collateralized by Eligible Fixed Assets;

(vi) That is not a Third Party Loan that is part of an existing 504 Project; and

(vii) For which the applicant for the refinancing available under this paragraph (g) has been current on all payments due for not less than one year preceding the date of application. For the purposes of this paragraph (vii), ''current on all payments due'' means that no payment was more than 30 days past due from either the original payment terms or modified payment terms (including deferments) if such modification was agreed to in writing by the Borrower and the lender of the existing debt prior to the October 12, 2011. Any delinquency in payment on the loan to be refinanced after approval and before debenture funding must be reported to SBA as an adverse change.

Refinancing Project means the fair market value of the Eligible Fixed Asset(s) securing the qualified debt and any other fixed assets acceptable to SBA.

Same institution debt means any debt of the Third Party Lender that is providing funds for the refinancing, or of its affiliates.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57987, Oct. 7, 2003; 74 FR 29591, June 23, 2009; 76 FR 9218, Feb. 17, 2011; 76 FR 63155, Oct. 12, 2011]

§ 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) and (g).

(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

(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; 76 FR 9219, Feb. 17, 2011]

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 loan since the date of application, and must furnish interim financial statements, current within 120 days of closing; and

(c) The CDC must issue an opinion to the best of its knowledge that there has been no unremedied substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application to SBA.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57987, Oct. 7, 2003]

PERMANENT FINANCING

§ 120.900 Sources of permanent financing.

Permanent financing for each Project must come from three sources: the Borrower's contribution, Third-Party Loans, and the 504 loan. Typically, the Borrower contributes 10 percent of the permanent financing, Third-Party Loans 50 percent and the 504 loan 40 percent.

THE BORROWER'S CONTRIBUTION

§ 120.910 Borrower contributions.

(a) The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property), in an amount equal to the following percentage of the Project cost, excluding administrative costs:

(1) At least 15 percent, if the Borrower (or Operating Company if the Borrower is an Eligible Passive Company) has operated for two years or less;

(2) At least 15 percent, if the Project involves the acquisition, construction, conversion, or expansion of a limited or single purpose building or structure;

(3) At least 20 percent, if the Project involves conditions described in paragraphs (a)(1) and (2) of this section; or

(4) At least 10 percent, in all other circumstances.

(b) The source of the contribution may be a CDC or any other source except an SBA business loan program (see § 120.913 for SBIC exception).

[64 FR 2118, Jan. 13, 1999]