

develop and test efficient and effective reporting procedures, and will publish appropriate procedural guidance as those procedures are finalized.

SBA proposes to allow PCLP CDCs to withdraw any funds from the LLRFs that exceed required minimums, at SBA's discretion. The proposed § 120.847(g) provides that requests for withdrawals must be forwarded to the Lead SBA Office, which will check the balances to ensure the required minimums are maintained and authorize withdrawals as appropriate.

Proposed § 120.847(h) would provide that when a PCLP CDC has submitted a liquidation wrap-up report to SBA, or SBA otherwise has determined that all reasonable collection efforts have been exhausted, the Lead SBA Office will calculate the SBA's loss and notify the PCLP CDC of the amount of any reimbursement obligation and provide appropriate supporting documentation. The proposed rule sets forth procedures so that PCLP CDCs may appeal any problems or disagreements regarding the calculation of SBA's loss.

Proposed § 120.847(i) would require PCLP CDCs to reimburse SBA for 10 percent of any loss and states that the reimbursement may come from the LLRF or from other funds provided by the PCLP CDC. There could also be instances where a PCLP CDC would not have sufficient funds in its LLRF to reimburse SBA for 10 percent of SBA's loss, and the regulation proposes to provide the PCLP CDC a reasonable period of time after SBA demand to reimburse the Agency.

Pursuant to section 508(c)(5), the proposed regulations would also require that should a PCLP CDC's LLRF drop below the required minimum, the PCLP CDC must replenish the LLRF within 30 days of the time that it realizes this deficiency or of a notice from SBA that the LLRF is deficient. Thus, if a depository institution offsets from any LLRFs maintained with the institution any amounts owing by the PCLP CDC to it, the PCLP CDC must replenish the LLRF to the full amount then required within 30 days.

Section 120.848, requirements of PCLP loan processing, closing, servicing, liquidating and litigating, would be added. SBA believes that the PCLP can be most prudently implemented and expanded if SBA focuses, at least initially, on expediting the processing of routine CDC loan applications under the PCLP and handling complex or problematic eligibility issues using standard 504 Loan procedures. However, SBA will continue to study and analyze this issue

and develop further guidance as the PCLP progresses.

Pursuant to § 508(e) of the Act, PCLP CDCs are permitted to approve, authorize, and close 504 Loans, subject to standards established by SBA. Proposed § 120.848 provides additional guidance and notes that all 504 Program requirements apply to 504 Loans processed by PCLP CDCs. PCLP CDCs are specifically authorized to determine a 504 Loan applicant's credit-worthiness and are permitted to establish the terms and conditions under which the loan will be made. The PCLP CDC also will be authorized to take other processing actions as may be delegated by SBA to PCLP CDCs. However, because SBA's management control and oversight responsibilities require a systematic review of a PCLP CDC's 504 loan processing proficiency, SBA must periodically review the processing actions of PCLP CDCs to ensure the PCLP CDC is using appropriate and reasonable procedures. PCLP CDCs are thus expected to retain in their loan files copies of all documents associated with their processing actions. SBA may occasionally review these documents on site or request that they be forwarded to SBA for review. If SBA identifies significant problems or deviations from SBA's 504 Program requirements, SBA will take appropriate corrective action, including possible removal from the PCLP.

The proposed rule also would require the authorized PCLP CDC official to sign all required documents and forward them to SBA's designated loan processing center for assignment of a loan number, subject to the availability of funds.

The PCLP CDC then would be expected to take appropriate action to close the loan and to prepare the closing documents for the corresponding debenture its closing counsel must issue an opinion stating the legal sufficiency of all closing documents, that all documentation has been obtained to comply with the loan terms and conditions established by the PCLP CDC and that the loan closing complies with all legal requirements and all 504 Program requirements for the PCLP. These actions are complex and will require the opinion of a qualified loan closing counsel. SBA counsel will close the PCLP debenture.

Pursuant to section 508(e) of the Act, SBA may delegate to PCLP CDCs responsibility for servicing 504 Loans, subject to terms and conditions as established by SBA. To enhance the efficiency of the PCLP, SBA intends to delegate most routine servicing actions to PCLP CDCs. However, SBA retains

management oversight responsibility for the effectiveness of the PCLP. Therefore, SBA will continue to monitor the quality and effectiveness of PCLP CDC servicing activities through onsite reviews and other evaluation activities. As a result, should significant problems develop, or when it substantially benefits SBA or the PCLP CDC, SBA may elect to handle some or all servicing actions associated with a particular 504 Loan or a particular PCLP CDC portfolio. However, SBA anticipates such actions to be rare and unusual. In delegating servicing authority to PCLP CDCs, SBA proposes that PCLP CDCs must use prudent and commercially reasonable standards and practices, as well as comply with all 504 Program requirements.

SBA is proposing to delete §§ 120.850–120.852, concerning ADCs, and to eliminate the ADC designation. First, SBA is seeking to eliminate redundancy in the regulations. One aspect of the ADC program was that it established requirements for organizations to qualify to contract with CDCs for 504-related services. However, § 120.824 permits CDCs to contract for 504-related services and governs such contracts. Second, these regulations established one of the grounds (not meeting the minimum required level of 504 Loan approval activity) for removing a CDC from the 504 Program. In the proposed rule, all grounds for taking enforcement action against a CDC would be combined under one regulation, § 120.854.

Section 120.855, CDC ethical requirements, would be redesignated as § 120.851, and reworded to clarify its meaning and to remove the reference to ADCs (see § 120.850 discussion).

Proposed new § 120.852 would prohibit a CDC from investing in or being affiliated with a 7(a) lender or an SBIC, which SBA believes will help to avoid apparent conflicts of interest and serve the economic development mission of the CDC. The proposed rule would not require a CDC with an existing investment in an SBIC to liquidate such investment. As part of the ANPRM, SBA asked the question whether SBA should permit a CDC to establish a 7(a) lender or permit a 7(a) lender to establish a CDC. The overwhelming response was that two programs should remain separate.

Proposed new § 120.853 is identical to existing § 120.973 except that it would eliminate references to ADCs.

Proposed new § 120.854, grounds for taking enforcement action against a CDC, § 120.855, types of enforcement actions, and § 120.856, enforcement procedures, would consolidate existing