

Loan Processing Center, the PCLP CDC is responsible for properly undertaking all actions necessary to close the PCLP Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with § 120.960.

(f) *Servicing, liquidation and litigation responsibilities.* The PCLP CDC generally must service, liquidate and litigate its entire portfolio of PCLP Loans, although SBA may in certain circumstances elect to handle such duties with respect to a particular PCLP Loan or Loans.

(g) *Making a 504 loan previously considered by another CDC.* A PCLP CDC also may utilize its PCLP status to process a 504 loan application from an applicant whose application was declined or rejected by another CDC operating in that same Area of Operations, if the applicant is located within that area and as long as SBA has not previously declined that applicant's 504 loan application. This may include the processing of a 504 loan application from an applicant that has withdrawn its application from another CDC.

26. Revise § 120.850 to read as follows:

§ 120.850 Expiration of Associate Development Company designation.

The designation of Associate Development Company (ADC) will cease to exist on January 1, 2004. After that date, former ADCs may continue to contract with CDCs as Lender Service Providers (see part 103 of this chapter) or to perform other services.

27. Add new undesignated center heading before § 120.851 to read as follows:

Other CDC Requirements

28. Revise § 120.851 to read as follows:

§ 120.851 CDC ethical requirements.

CDCs and their Associates must act ethically and exhibit good character. They must meet all of the ethical requirements of § 120.140. In addition, they are subject to the following:

(a) Any benefit flowing to a CDC's Associate or his or her employer from activities as an Associate must be merely incidental (this requirement does not prevent an Associate or an Associate's employer from providing interim financing as described in § 120.890 or Third Party Loans as described in § 120.920, as long as such activity does not violate § 120.140); and

(b) A CDC's Associate may not be an officer, director, or manager of more than one CDC.

29. Revise § 120.852 to read as follows:

§ 120.852 Restrictions regarding CDC participation in the Small Business Investment Company (SBIC) program and the 7(a) loan program.

(a) *7(a) loan program.* A CDC must not invest in or be an Affiliate of a Lender participating in the 7(a) loan program described in § 120.2(a). (For a definition of Affiliation, refer to § 121.103 of this chapter.)

(b) *SBIC program.* A CDC must not directly or indirectly invest in a Licensee (as defined in § 107.50 of this Title) licensed by SBA under the SBIC program authorized in Part A of Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*

30. Add a new undesignated center heading immediately preceding new § 120.853 to read as follows:

SBA Oversight

31. Redesignate § 120.973 as § 120.853 and revise redesignated § 120.853 to read as follows:

§ 120.853 Oversight and evaluation of CDCs.

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

32. Add a new undesignated center heading immediately preceding new § 120.854 to read as follows:

SBA Enforcement Actions

§ 120.855 [Removed]

33. Remove § 120.855.

33a. Add §§ 120.854–120.856 to read as follows:

§ 120.854 Grounds for taking enforcement action against a CDC.

The AA/FA or his or her authorized delegate may undertake one or more of the enforcement actions set forth in § 120.855 with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(a) The CDC has failed to receive SBA approval for at least four 504 loans during two consecutive fiscal years;

(b) The CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization.

(c) The CDC has made a material false statement or has failed to disclose a material fact to SBA:

(1) With respect to a 504 loan;

(2) In applying to SBA for authority to participate in the 504 program or for any

change in the CDC's participation in the 504 program; or

(3) In any report or other disclosure of information that SBA requires.

(d) The CDC is not performing underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially reasonable or prudent manner. Supporting evidence may include but is not limited to failure to meet one or more of the portfolio benchmarks.

(e) The CDC fails to correct an underwriting, closing, servicing, liquidation, litigation, or reporting deficiency, or fails to take other corrective action, after receiving notice from SBA of a deficiency or the need to take corrective action, within the time period specified in SBA's notice of deficiency.

(f) The CDC has engaged in a pattern of uncooperative behavior or taken an action that SBA determines is deleterious to the 504 program, that undermines SBA's management and administration of the 504 program, or that is not consistent with standards of good conduct.

§ 120.855 Types of enforcement actions.

(a) *Enforcement.* Upon a determination that one or more of the grounds set forth in § 120.854 exist, the AA/FA or his or her authorized delegate may undertake, in SBA's sole discretion, one or more of the following enforcement actions:

(1) Suspend or terminate the CDC's authority to participate in the 504 program or to participate as an ALP CDC or PCLP CDC, or in any pilot or program within the 504 program established by SBA. Any such suspension will be for a term determined by SBA in its sole discretion.

(2) Suspend or terminate the CDC's authority to perform underwriting, closing, servicing, liquidation, or litigation on one or more 504 loans or to perform any other function in connection with the 504 program. Any such suspension will be for a term determined by SBA in its sole discretion.

(3) Require the CDC to transfer some or all of its existing 504 loan portfolio and/or some or all of its pending 504 loan applications, to SBA, another CDC, or any other entity designated by SBA. Any such transfer may be on a temporary or permanent basis, in SBA's sole discretion.

(4) Instruct the CSA to withhold payment of servicing, late and/or other fee(s) to the CDC and, if SBA has experienced financial loss as a result of the CDC's failure to comply with any