

while SBA had stated in the preamble that the regulation was to continue to cover SBA's decision with respect to new CDCs, CDCs expanding into local economic areas, and CDCs becoming multi-state CDCs, the proposed revision to the heading of the section was misleading. SBA therefore makes clarifying changes to both the heading and to § 120.837(b). Also the commenters found the reference to the enforcement regulations not applying in these cases to be confusing. SBA has deleted the reference to the enforcement regulations, §§ 120.855 through 120.857, for the same reasons discussed regarding § 120.810.

Section 120.838, expiration of existing, temporary expansions, was a short-term regulation to manage the conversion of existing temporary expansions into permanent expansions by March 1, 1996, and is no longer required. Comments received generally supported the proposed deletion of this regulation. Therefore, the final rule adopts the deletion of the regulation as was proposed.

Section 120.839, case-by-case extensions, gives a district office the authority to make all decisions concerning whether SBA will allow a CDC to make a 504 Loan outside of its area of operations (other than multi-state or local economic area expansions), and adds, as a new basis for such decision, the situation in which a State may not have a CDC. (For example, currently Alaska has no CDC.) In addition, SBA is deleting as a basis for such decision, the situation in which specific circumstances exist that prevent an existing CDC serving that area from adequately assisting the business (see § 120.839(a)(2)), because the exception has never been used and SBA's experience indicates that it is unnecessary. Comments received by SBA generally supported the proposed changes. Some commenters wanted the regulation to emphasize that the applicant CDC must demonstrate that it can properly service the 504 loan it wishes to make outside its area of operations, in addition to fulfilling its other 504 Program responsibilities for the 504 loan. Section 120.839(b) currently has this specific requirement, although SBA had proposed to expand this beyond just servicing. SBA agrees with this concern and is adding language back to the final rule that emphasizes a CDC's servicing responsibilities regarding the loan. Other commenters expressed concern that a small business may be prevented from receiving a 504 loan if CDCs covering the area are not willing to consider an application from such a

business and, therefore, urged SBA to preserve existing § 120.839(a)(2). However, as SBA explained in the proposed rule, SBA's experience indicates that this provision is unnecessary since it has never been used. In addition, the change in the minimum area of operations will vastly increase many CDC's area of operations, resulting in less need for case-by-case exceptions in general since small businesses will have expanded access to and choices among CDCs. Therefore, § 120.839 is adopted as proposed except for the modifications discussed.

SBA substantially revises § 120.840, accredited lenders program to describe the ALP, the benefits a CDC will receive through the ALP, how to apply for the ALP, and how SBA will process the application. Comments received generally were supportive of the proposed change, although several expressed concern that the section does not specifically state that a CDC may seek renewal of its ALP status every two years. Even though in SBA's experience CDCs have routinely been renewed for consecutive two-year periods, SBA is modifying the regulation to state "periods" rather than the singular "period". In addition, SBA has deleted the reference to the enforcement regulations, §§ 120.855 through 120.857, for the same reasons discussed regarding § 120.810. This rule adopts § 120.840 as proposed except for the modifications discussed.

In § 120.841, SBA is establishing more detailed qualifications for the ALP. The standards are consistent with section 507 of the Act and coordinate with eligibility requirements for CDC participation in the PCLP (see § 120.845 discussion below). These changes will make it easier for SBA to provide consistent and objective evaluation of a CDC application to participate in the ALP.

Several commenters asked for additional clarity regarding the qualification requirements of the CDC's staff. In light of those comments, SBA reviewed the proposed rule and agreed there should not be two sections on CDC staff qualification requirements. Accordingly, SBA has consolidated the two paragraphs regarding staff experience into one paragraph as well as added some clarifying language.

SBA received several comments pointing out that the PCLP regulations permit some flexibility in SBA's determination of whether a CDC is in compliance with 504 Program requirements by introducing the concept of "substantially," whereas the ALP regulations do not. Since one of the requirements to be a PCLP CDC is to

qualify as an ALP CDC, it would be inconsistent to not permit the same flexibility in the ALP regulations. Therefore, SBA has modified this section to apply the concept of "substantially" to compliance with ALP requirements as well.

SBA received several comments regarding proposed § 120.841(d) which indicated that a CDC must meet SBA's CDC portfolio benchmarks. The comments raised concerns regarding the accuracy of the benchmarks and alleged that the benchmarks were not developed through a public comment process. Several comments also stated that use of the benchmarks would not be fair, to the extent that a CDC's default rate was derived from loans that are approved by SBA or to the extent that a CDC's loss rate was derived from liquidation and debt-collection litigation that was handled by SBA or the Department of Justice. Since these actions were not subject to the control of the CDC, the comments contended, it would be unfair for SBA to consider the CDC to be not in compliance with 504 Program requirements based on the relevant benchmark score. These comments recommended that SBA either delete or modify the language regarding the portfolio benchmarks in § 120.841(d). Several commenters questioned SBA's authority to establish portfolio performance benchmarks in the first instance.

SBA strongly disagrees with those comments. SBA has responsibility, as 100% guarantor of each debenture issued by CDCs and as the sole regulatory oversight agency for CDCs, to protect the safety and soundness of the 504 Program. CDCs are established by SBA, with the responsibility to identify and approve only those 504 loans that are eligible, creditworthy, sufficiently collateralized, and have a reasonable expectation, based on the CDC's thorough financial analysis, of timely repayment. CDCs also are required to close 504 loans in compliance with SBA's loan authorization and other requirements. CDCs also must adequately service loans. While SBA may retain the right to review some aspects of the CDC's approval, closing, and servicing activities (depending on the status of the CDC), this review does not negate the CDC's responsibility to comply with 504 Program requirements and act in a prudent, commercially reasonable manner with respect to these activities. SBA may have a greater degree of control over 504 loan liquidation activities, depending on the status of the CDC, but the amount of loan recoveries during liquidation depends to a great degree on the initial