

underwriting and subsequent servicing decisions made by the CDC.

In order to more effectively fulfill SBA's responsibility to monitor and oversee CDCs' activities, several years ago SBA established a means of collecting 504 loan performance information for each CDC, in five areas: Currency, delinquency, default, liquidation, and loss. SBA then used this information to determine the level (benchmark) of performance that SBA considers to present an acceptable level of risk to SBA's overall 504 loan portfolio for each of the five areas. Beginning in 1999, SBA issued a series of notices informing CDCs about this CDC performance information system, identified where the information regarding each CDC's performance was available, and advising CDCs that SBA would be using the system to evaluate each CDC. In addition to the notices, SBA explained to the CDC community the system and the sources of information used in the system, at several national conferences as well as by providing information on SBA's internet website. Thus, the proposed rule was not the first time CDCs received notice about the benchmarks. SBA believes that evaluating the performance of each CDC is an essential part of SBA's overall responsibility to manage the 504 Program so as to minimize the financial risk to the taxpayers.

Several comments attempted to show that the benchmarks were not accurate, relying on the argument that SBA has altered its measure of the 504 Program subsidy rate over the past decade (although the comments did not clarify how this measure has any direct application to the benchmark scores). However, SBA finds it highly significant that not one comment identified a specific case where the portfolio performance scores for a particular CDC were found to be inaccurate. SBA provides CDCs with their benchmark scores on a monthly basis (the scores soon will be available to CDCs directly through the Internet rather than through their district offices), and in those few cases where CDCs have brought to SBA's attention concerns about the accuracy of a particular benchmark score SBA has consistently worked with the CDC to understand the basis for the concern and make any necessary corrections. Thus, SBA believes the benchmarks overall are accurate and are a reliable means of measuring a CDC's performance, particularly because all CDCs are subject to the same criteria and because individual CDCs are measured against other CDCs in their tier with similar portfolio sizes.

In the context of a specific finding by SBA, relying on a CDC's portfolio benchmark score as evidence that the CDC was not in compliance with 504 Program requirements, the CDC, having access to its score and having its own information about the performance of its loan portfolio, would be able to present to SBA its arguments that the benchmark score was inaccurate and SBA would carefully consider those comments before proceeding to take any action using the score as evidence in support of such action.

SBA has considered the comments concerning the portfolio benchmarks in § 120.841(d) in the proposed rule, and in the final rule modifies this section so it will be consistent with § 120.854(d), which addresses a CDC's failure to meet one or more portfolio benchmarks as evidence of its failure to perform underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially unreasonable or imprudent manner. As a result of this change, SBA will consider a CDC's performance on the portfolio benchmarks to be a measure, indicator, or evidence of how the CDC is complying with various 504 Program requirements.

This final rule adopts § 120.841 as proposed except as discussed.

Section 120.845, premier certified lenders program, is implemented as proposed except for one change. SBA added the word "substantially" to § 120.845(c)(1) for the reasons discussed for § 120.841.

The PCLP is now a permanent program pursuant to section 508 of the Act. SBA is adding considerably more detail to § 120.845 and moving some of its revised and expanded provisions to new §§ 120.846–120.848. Since CDCs participating in the PCLP must be approved to participate under the ALP or be "ALP qualified," SBA is adding some of the PCLP requirements to § 120.841.

The PCLP is designed to take advantage of the proven loan processing and servicing skills of SBA's most proficient and most active CDCs. It is a relatively new program (started in 1994 as a pilot program) with a somewhat limited operating history. Because SBA transfers substantial additional authority to CDCs, the PCLP carries potentially significant risk to SBA and the 504 Program. Therefore, SBA intends to closely monitor and control program implementation and expansion. With respect to SBA's prior review of a 504 Loan at the loan approval stage, SBA is interested in limiting/minimizing its involvement in

reviewing 504 Loans made by PCLP CDCs. While, initially, SBA expects to continue to review loan eligibility while delegating virtually all credit decisions to PCLP CDCs, SBA will consider expanding or reducing that authority as warranted by the results of the program.

Participation in the PCLP, pursuant to section 508(b) of the Act, is limited to those CDCs that are active in the 504 Program; are in good standing with SBA; have demonstrated the ability to properly analyze, close and service 504 Loans; and have been active as ALP CDCs. Section 508(b)(2)(A) of the Act allows SBA to waive the requirement for those non-ALP CDCs that meet the ALP participation criteria. However, rather than developing a waiver process, SBA is incorporating the ALP participation criteria into the PCLP participation criteria (see § 120.845(c)(1)).

Based on the guidance in the statute, and following extensive discussion with the CDC industry, SBA developed more specific factors to be used in evaluating a CDC's level of activity; ability to properly analyze, close, service and liquidate 504 Loans; and good standing. Each factor represents a major and essential CDC function, and each carries significant risk to SBA and the 504 Program. Because SBA delegates substantial authority and autonomy to PCLP CDCs, it considers each factor important, and a substantive deficiency in any one may preclude participation in the PCLP. SBA will use information from onsite compliance reviews, operational reviews and other program management and oversight activities to make the determination regarding eligibility for PCLP status.

Congress, SBA and the CDC industry recognize that the success of the PCLP is highly dependent on the extent to which PCLP CDCs are familiar with SBA's credit and eligibility standards and its loan processing, closing, servicing and liquidation policies and procedures. These policies and procedures are highly complex and require processing a substantial volume of 504 Loans over an extended period of time to remain proficient. Also, SBA needs access to a significant number of a CDC's loans to evaluate its proficiency. SBA notes that ALP its participants must have processed at least twenty 504 Loans in the most recent three years (see § 120.841(b)). When considering the minimum 504 Loan volume requirement for participation in the PCLP, SBA considered the concern of smaller and rural CDCs that a high minimum 504 Loan volume requirement could exclude them from being a PCLP CDC. SBA discussed those concerns with the CDC