

PCLP CDC of the amount of any reimbursement obligation and provide appropriate supporting documentation. The final rule sets forth procedures so that PCLP CDCs may appeal any problems or disagreements regarding the calculation of SBA's loss.

Section 120.847(i) requires 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 describes the period of time by which the CDC must reimburse the Agency.

Pursuant to section 508(c)(5) of the Act, the final rule requires 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. Comments received regarding these changes concerned a perceived inconsistency in the source of reimbursement to SBA for losses. SBA considered this concern and is revising § 120.847 to clarify that a PCLP CDC may reimburse SBA for losses either from the LLRF or other funds.

Section 120.848, requirements of PCLP loan processing, closing, servicing, liquidating and litigating, is added.

Pursuant to section 508(e)(1) of the Act, PCLP CDCs are permitted to approve, authorize, close, service, and liquidate 504 Loans, subject to terms and conditions established by SBA. SBA's authority to establish such terms and conditions is limited by section 508(e)(2) of the Act, which states that the CDC's approval of a 504 Loan using its PCLP authority is subject to SBA's final approval of the PCLP debenture as to eligibility but that SBA as part of its approval may not review the creditworthiness, loan closing, and legal compliance (except with respect to eligibility) of the underlying 504 loan.

Several comments objected to the proposed § 120.848, including SBA's authority to require a PCLP CDC to process 504 Loans involving complex or problematic eligibility issues through SBA using standard loan processing procedures (§ 120.848(c)), or to require a PCLP CDC to turn over to SBA the handling of a particular PCLP loan

(§ 120.848(f)). These commenters suggested that SBA does not have the authority, under section 503(e)(2) of the Act, to require that PCLP CDCs take these actions. However, SBA believes that these commenters misinterpret the Act. SBA has specific authority under section 508(e)(1) to establish the terms and conditions under which PCLP CDCs are permitted to approve, authorize, close, service, and liquidate 504 Loans, which authority encompasses all of the terms and conditions SBA proposed in the proposed rule.

Section 120.848 provides guidance on PCLP CDCs' approving, authorizing, closing, servicing, and liquidating 504 Loans and notes that all 504 Program requirements apply to 504 Loans processed by PCLP CDCs. Under § 120.848(c), PCLP CDCs are specifically authorized to determine a 504 Loan applicant's credit-worthiness; to establish the terms and conditions under which the loan will be made; and to take other processing actions as may be delegated by SBA to PCLP CDCs. SBA believes that the PCLP can be most prudently administered 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.

Several comments suggested that SBA revise the requirement in § 120.848(c) that complex loan applications be processed through the Lead SBA Office, because SBA currently is expanding its centralized 504 loan processing activity. SBA considered this suggestion and agreed that this section should be modified. Therefore, in § 120.848(c) in the final rule, SBA deleted "Lead SBA Office" and added "SBA," in order to accommodate ongoing Agency changes.

Several comments also suggested that SBA consider permitting PCLP CDCs to close their own 504 loans without SBA review. SBA notes that under § 120.848(e), a PCLP CDC is required to close PCLP loans and debentures under SBA's expedited loan closing procedures, which provides for a limited review of documents relating to the debenture, but does not include an entire review of the CDC's closing of the 504 Loan underlying that debenture. This is entirely consistent with the Act and with the comments. SBA did not propose to modify SBA's current practice, in which SBA shares with the PCLP CDC joint responsibility for closing the PCLP debenture. Refer to the discussion of § 120.960, responsibility

for closing, for further discussion of SBA's reasons for not changing this current practice.

Several commenters also suggested that PCLP CDCs be permitted to make eligibility determinations which involve franchise issues and issues of potential environmental hazards and liability with respect to the project property collateral, independently and without SBA's review. SBA considered these suggestions but implements the proposed rule without change on this issue. These are important issues that relate to the eligibility for 504 loan financing of the borrower and of the project itself, and SBA has the authority under section 508(e)(2) of the Act to review and approve eligibility issues. Accordingly, SBA implements § 120.848 as proposed except as discussed.

With respect to § 120.848(b), SBA's management control and oversight responsibilities require a systematic review of a PCLP CDC's 504 loan processing proficiency. As a result, 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.

SBA is deleting §§ 120.850–120.852, concerning ADCs, to eliminate the ADC designation. The reasons are twofold. 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 discussed under § 120.854. In the final rule, all grounds for taking enforcement action against a CDC are combined under one regulation, § 120.854.

Section 120.855, CDC ethical requirements, is redesignated as § 120.851, and reworded to clarify its meaning and to remove the reference to ADCs (see § 120.850 discussion). SBA received several comments on this regulation. SBA proposed to delete the "good cause" exception to the general