

rule, that an associate of a CDC may not be an officer, director, or manager of more than one CDC, and the commenters requested that such an exception remain. SBA has considered these comments but believes that, in every case, a CDC should be independently managed and operated to pursue its own economic development mission. Further, SBA believes that with the new requirement that each CDC's area of operations be statewide, a potential for a conflict of interest exists if the same individual is an officer of or on the board of two CDCs. Therefore, SBA is adopting § 120.851 as proposed.

Section 120.852 prohibits 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. However, the final rule does not require a CDC with an existing investment in an SBIC to liquidate such investment. In response to the ANPRM, commenters overwhelmingly stated that SBA should not permit a CDC to establish a 7(a) lender or permit a 7(a) lender to establish a CDC and that the two programs should remain separate. Comments in response to the proposed rule also were generally supportive of the separation of 7(a) lenders and CDCs. Several commenters suggested that there be an exception for CDCs that already are affiliated with State development companies that were authorized under section 501 of the Act that could continue to be so affiliated, even if the state development company is a 7(a) lender. SBA considered these comments and agrees to permit this exception.

SBA also received comments regarding the proposed prohibition on a CDC investing in an SBIC. A typical comment opposed the prohibition on the basis that it would eliminate a CDC's use of the SBIC program as an economic development tool (without explaining why it was believed this would occur). SBA believes the concern is unfounded. In general, if a CDC has an investment in an SBIC, then the CDC would be prohibited from referring a 504 borrower to that SBIC for that borrower's venture capital requirements. By contrast, by prohibiting a CDC itself from having an investment in an SBIC, the CDC will be free to refer its borrowers to the SBIC for venture capital, thus increasing the borrowers's access to capital. Other comments requested that the regulation be modified to be consistent with the preamble to the proposed rule, which SBA stated that the Agency would not require a CDC with an existing investment in an SBIC to liquidate such investment. SBA has considered this

comment and agrees that the final rule should be modified to reflect this exception. This rule adopts § 120.882 as it was published in the proposed rule except as discussed.

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

New § 120.854, grounds for taking enforcement action against a CDC, § 120.855, types of enforcement actions, and § 120.856, enforcement procedures, consolidate existing § 120.852 and §§ 120.982–120.984. These provisions also clarify and expand the grounds required for SBA enforcement actions against CDCs as well as SBA's and CDCs' rights and responsibilities in such actions. Section 120.981, voluntary transfer and surrender of CDC certification, is redesignated as § 120.857 to move it under the new heading entitled Enforcement Actions.

SBA received numerous comments regarding SBA's proposed changes to its enforcement procedures. Several comments expressed concern that SBA officials would abuse the authority provided by the enforcement regulations to unfairly penalize or control CDCs. Thus, one comment expressed concern that the regulations "can be open to wide interpretation by any SBA official at either the local or national level." Another comment stated that the enforcement provisions are "an attempt to give SBA personnel effective operating control of all CDCs" and that "[t]hrough the guise of oversight and evaluation SBA officials are attempting to create a web of regulations, which would enable a vindictive official to manipulate every action of a CDC under threat of suspension or termination."

These comments reflect considerable misunderstanding of the regulations and how SBA typically conducts enforcement actions. SBA's actions reflect numerous layers of careful review and various controls in order to ensure that all facts and relevant issues are considered. Notably, the regulations only authorize the AA/FA (or his or her authorized delegate) to undertake enforcement actions, not numerous agency officials. Moreover, an enforcement action usually begins with a recommendation from the district office, which is signed and approved by various officials. When the recommendation reaches SBA's Headquarters, it is reviewed by a number of officials, as well as attorneys in SBA's Office of General Counsel prior to the initiation of any proposed action. After a notice of proposed action is sent to the program participant, any response from the participant is given considerable analysis by numerous SBA

officials and attorneys and a consensus is attained as to whether to proceed with a final enforcement action. This carefully considered process should allay any concerns. Nevertheless, SBA's responsibility for managing the 504 Program requires that the Agency have a wide range of enforcement options available and considerable flexibility in implementing these actions. Moreover, SBA's revision of the enforcement regulations is a direct response to problems that SBA has encountered under the current regulations in dealing with CDCs that have repeatedly failed to comply with SBA rules and regulations or which have willfully failed to comply with SBA efforts to require compliance with regulations and other requirements. Thus, SBA disagrees with those comments that sought to retain the current enforcement regulations without change.

Several comments noted that the Act already prescribes the grounds for enforcement actions to suspend or revoke an ALP CDC or a PCLP CDC's ability to participate in these programs, and, therefore, that the proposed enforcement provisions as they relate to an ALP CDC or PCLP CDC were inconsistent with the statute.

SBA inadvertently consolidated the grounds for such enforcement actions with the general enforcement provisions in the proposed rule, and agrees that the Act sets forth grounds (but not procedures) for the suspension or termination (which the statute refers to as a revocation) of a CDC's authority to act as an ALP CDC or PCLP CDC. Consequently, SBA has made minor revisions to §§ 120.854 to include, verbatim as set forth in the Act, the grounds for such enforcement actions in new paragraphs (b) and (c), and has made conforming technical changes to § 120.855. Although these grounds for enforcement were not included in the proposed rule, the final rule simply incorporates statutory language, which SBA does not have discretion to modify, and makes conforming technical changes to the proposed rule.

In the final rule, all grounds for taking enforcement action against a CDC are combined under one regulation, § 120.854. SBA received some comments that asked whether § 120.854(b) would be applied retroactively. Section 120.180, however, currently provides for prospective application of any new regulations under Part 120, and this regulation has not been amended by this final rule.

Some comments suggested that the word "knowingly" be inserted into § 120.854(c) to establish intent. SBA considered this concern but has