

(d) *Additional application requirements.* The application must include the following:

(1) Certified copy of the CDC's Board of Directors' resolution authorizing the application for PCLP status.

(2) Summary of the experience of each of the CDC's loan processing, closing, servicing and liquidation staff members with significant authority.

(3) Name, address and summary of experience of Designated Attorney.

(4) Documentation of any SBA required insurance.

(5) Any other documentation required by SBA.

(e) *Term of designation.* If approved, SBA generally will confer PCLP status for a period of two years. However, if SBA deems it appropriate, it may confer PCLP status for a period of less than two years.

(f) *Area of Operations for PCLP CDCs.* If the SBA approves the CDC's application, the PCLP CDC may exercise its PCLP authority in its entire Area of Operations.

(g) *SBA approval or decline decision.* SBA will notify the CDC in writing of an approval or decline of a PCLP application. If an application is declined, SBA will notify the CDC of the reasons for the decision.

■ 27a. Add §§ 120.846 through 120.848 to read as follows:

**§ 120.846 Requirements for maintaining and renewing PCLP status.**

(a) To maintain its status as a PCLP CDC, a CDC must continue to:

(1) Meet the PCLP eligibility requirements in § 120.845.

(2) Timely conform with all requirements and deadlines set forth in SBA's regulations and policy and procedural guidance concerning properly establishing, funding and reporting a PCLP Loan Loss Reserve Fund (LLRF).

(3) Substantially comply with all 504 program requirements imposed by statute, regulation, SOPs, policy and procedural notices, loan authorizations, Debentures, and agreements between the CDC and SBA.

(4) Remain an active CDC.

(5) In accordance with statutory requirements set forth in section 508(i) of Title V, 15 U.S.C. 697e(i), establish a goal of processing at least 50 percent of its 504 loans using PCLP procedures.

(b) SBA will notify the PCLP CDC in writing of a renewal or non-renewal of PCLP status. If PCLP status is not renewed, SBA will notify the CDC of the reasons for the decision.

**§ 120.847 Requirements for the Loan Loss Reserve Fund (LLRF).**

(a) *General.* PCLP CDCs must establish and maintain a LLRF (or multiple accounts which together constitute one LLRF) which complies with paragraphs (b) through (g) of this section. A PCLP CDC must use the LLRF or other funds to reimburse the SBA for 10 percent of any loss sustained by SBA as a result of a default in the payment of principal or interest on a Debenture it issued under the PCLP ("PCLP Debenture"). A CDC that is participating in the PCLP as of January 1, 2004, and a CDC that has participated in the PCLP in the past but which does not have PCLP status as of that date, must establish a LLRF within 30 days of that date to cover potential losses for all 504 loans made in connection with PCLP Debentures that remain outstanding as of that date. A CDC that receives PCLP status after that date must establish and maintain a LLRF prior to closing any 504 loans processed under its PCLP status. The LLRF is the accumulation of deposits that a PCLP CDC must establish and maintain for each PCLP Debenture that it issues. PCLP CDCs must coordinate with their Lead SBA Office to ensure that the LLRF is properly established, that all necessary documentation is executed and delivered by all parties in a timely fashion, and that all required deposits are made.

(b) *PCLP CDC Exposure and LLRF deposit requirements.* A PCLP CDC's "Exposure" is defined as its reimbursement obligation to SBA with respect to default in the payment of any PCLP Debenture. The amount of a PCLP CDC's Exposure is 10 percent of any loss (including attorney's fees; litigation costs; and care of collateral, appraisal and other liquidation costs and expenses) sustained by SBA as a result of a default in the payment of principal or interest on a PCLP Debenture. For each PCLP Debenture a PCLP CDC issues, it must establish and maintain an LLRF equal to one percent of the original principal amount (the face amount) of the PCLP Debenture. The amount the PCLP CDC must maintain in the LLRF for each PCLP Debenture remains the same even as the principal balance of the PCLP Debenture is paid down over time.

(c) *Establishing a LLRF.* The LLRF must be a deposit account (or accounts) with a federally insured depository institution selected by the PCLP CDC. A "deposit account" is a demand, time, savings, or passbook account, including a certificate of deposit (CD) which is either uncertificated or, if certificated, non-transferable. A "deposit account" is

not an investment account and must not contain securities or other investment properties. A deposit account may contain only cash and CDs credited to that account. A PCLP CDC may pool its deposits for multiple PCLP Debentures in a single account in one institution. The LLRF must be segregated from the PCLP CDC's other operating accounts. The PCLP CDC is responsible for all fees, costs and expenses incurred in connection with establishing, managing and maintaining the LLRF, including fees associated with transferring funds or early withdrawal of CDs, and related income tax expenses.

(d) *Creating and perfecting a security interest in a LLRF.* A PCLP CDC must give SBA a first priority, perfected security interest in the LLRF to secure the PCLP CDC's obligation to reimburse SBA for the PCLP CDC's Exposure under all of its outstanding PCLP Debentures. (If a PCLP CDC's LLRF is comprised of multiple deposit accounts, it must give SBA this security interest with respect to each such account.) The PCLP CDC must grant to SBA the security interest in the LLRF pursuant to a security agreement between the PCLP CDC and SBA, and a control agreement between the PCLP CDC, SBA, and the applicable depository institution. The control agreement must include provisions requiring the depository institution to follow SBA instructions regarding withdrawal from the account without a requirement for obtaining further consent from the PCLP CDC, and must restrict the PCLP CDC's ability to make withdrawals from the account without SBA consent. When establishing the LLRF, a PCLP CDC must coordinate with its Lead SBA Office to execute and deliver the required documentation. The PCLP CDC must provide to the Lead SBA Office a fully executed original of the security and control agreements. All documents must be satisfactory to SBA in both form and substance.

(e) *Schedule for contributions to a LLRF.* The PCLP CDC must contribute to the LLRF the required deposits for each PCLP Debenture in accordance with the following schedule:

(1) At least 50 percent of the required deposits to the LLRF on or about the date that it issues the PCLP Debenture.

(2) At least an additional 25 percent of the required deposits to the LLRF no later than one year after it issues the PCLP Debenture.

(3) Any remainder of the required deposits to the LLRF no later than two years after it issues the PCLP Debenture.

(f) *LLRF reporting requirements.* Each PCLP CDC must periodically report to SBA the amount in the LLRF in a form