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13 CFR Ch. I (1–1–10 Edition)

must liquidate and handle debt collection litigation with respect to all PCLP Loans in its portfolio on behalf of SBA as required by §120.848(f), in accordance with subpart E of this part. With respect to all other 504 loans that a PCLP CDC makes, the PCLP CDC is an Authorized CDC Liquidator and must exercise its delegated authority to liquidate and handle debt-collection litigation in accordance with subpart E of this part for such loans, if the PCLP CDC is notified by SBA that it meets either of the following requirements to be an Authorized CDC Liquidator, as determined by SBA:

(1) The PCLP CDC has one or more employees who have not less than two years of substantive, decision-making experience in administering the liquidation and workout of defaulted or problem loans secured in a manner substantially similar to loans funded with 504 loan program debentures, and who have completed a training program on loan liquidation developed by the Agency in conjunction with qualified CDCs that meet the requirements of this section; or

(2) The PCLP CDC has entered into a contract with a qualified third party for the performance of its liquidation responsibilities and obtains the approval of SBA with respect to the qualifications of the contractor and the terms and conditions of the contract.

(b) *All other CDCs.* A CDC that is not authorized under paragraph (a) of this section may apply to become an Authorized CDC Liquidator with authority to liquidate and handle debt collection litigation with respect to 504 loans on behalf of SBA, in accordance with subpart E of this part, if the CDC meets the following requirements:

(1) The CDC meets either of the following criteria:

(i) The CDC participated in the loan liquidation pilot program established by the Small Business Programs Improvement Act of 1996 prior to October 1, 2006; or

(ii) During the three fiscal years immediately prior to seeking such authority, the CDC made an average of not less than ten 504 loans per year; and

(2) The CDC meets either of the following requirements:

(i) The CDC has one or more employees who have not less than two years of substantive, decision-making experience in administering the liquidation and workout of defaulted or problem loans secured in a manner substantially similar to loans funded with 504 loan program debentures, and who have completed a training program on loan liquidation developed by the Agency in conjunction with qualified CDCs that meet the requirements of this section; or

(ii) The CDC has entered into a contract with a qualified third party for the performance of its liquidation responsibilities and obtains the approval of SBA with respect to the qualifications of the contractor and the terms and conditions of the contract.

(c) *CDC counsel.* To perform debt collection litigation under paragraphs (a) or (b) of this section, a CDC must also have either in-house counsel with adequate experience as approved by SBA or entered into a contract for the performance of debt collection litigation with an experienced attorney or law firm as approved by SBA.

(d) *Application for authority to liquidate and litigate.* To seek authority to perform liquidation and debt collection litigation under paragraphs (b) and (c) of this section, a CDC other than a PCLP CDC must submit a written application to SBA and include documentation demonstrating that the CDC meets the requirements of paragraph (b) and (c) of this section. If a CDC intends to use a contractor to perform liquidation, it must obtain approval from SBA of both the qualifications of the contractor and the terms and conditions in the contract covering the CDC's retention of the contractor. SBA will notify a CDC in writing when the CDC can begin to perform liquidation and/or debt collection litigation under this section.

[72 FR 18365, Apr. 12, 2007]

**ENFORCEABILITY OF 501, 502 AND 503
LOANS AND OTHER LAWS**

§ 120.990 501, 502 and 503 loans.

SBA has discontinued loan programs for 501, 502, and 503 loans. Outstanding loans remain under these programs, and Borrowers, CDCs, and SBA must

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comply with the terms and conditions of the corresponding notes and Debentures, and the regulations in this part in effect when the obligations were undertaken or last in effect, if applicable.

§ 120.991 Effect of other laws.

No State or local law may preclude or limit SBA's exercise of its rights with respect to notes, guarantees, Debentures and Debenture Pools, or of its enforcement rights to foreclose on collateral.

Subpart I—Risk-Based Lender Oversight

SOURCE: 72 FR 25194, May 4, 2007, unless otherwise noted.

SUPERVISION

§ 120.1000 Risk-Based Lender Oversight.

(a) *Risk-Based Lender Oversight.* SBA supervises, examines, and regulates, and enforces laws against, SBA Supervised Lenders and the SBA operations of SBA Lenders, Intermediaries, and NTAPs.

(b) *Scope.* Most rules and standards set forth in this subpart apply to SBA Lenders as well as Intermediaries and NTAPs. However, SBA has separate regulations for enforcement grounds and enforcement actions for Intermediaries and NTAPs at §120.1425 and §120.1540.

[73 FR 75519, Dec. 11, 2008]

§ 120.1005 Bureau of PCLP Oversight.

SBA's Bureau of PCLP Oversight within OCRM, monitors the capitalization of PCLP CDC pilot participants' LLRFs and performs other related functions.

[73 FR 75519, Dec. 11, 2008]

§ 120.1010 SBA access to SBA Lender, Intermediary, and NTAP files.

An SBA Lender, Intermediary, and NTAP must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to review, inspect, and copy all records and documents, re-

lating to SBA guaranteed loans or as requested for SBA oversight.

[73 FR 75519, Dec. 11, 2008]

§ 120.1015 Risk Rating System.

(a) *Risk Rating.* SBA may assign a Risk Rating to all SBA Lenders, Intermediaries, and NTAPs on a periodic basis. Risk Ratings are based on certain risk-related portfolio performance factors as set forth in notices or SBA's SOPs and as published from time to time.

(b) *Rating categories.* Risk Ratings fall into one of two broad categories: Acceptable Risk Ratings or Less Than Acceptable Risk Ratings.

[73 FR 75519, Dec. 11, 2008]

§ 120.1025 Off-site reviews and monitoring.

SBA may conduct off-site reviews and monitoring of SBA Lenders, Intermediaries, and NTAPs, including SBA Lenders', Intermediaries' or NTAPs' self-assessments.

[73 FR 75519, Dec. 11, 2008]

§ 120.1050 On-site reviews and examinations.

(a) *On-site reviews.* SBA may conduct on-site reviews of the SBA loan operations of SBA Lenders. The on-site review may include, but is not limited to, an evaluation of the following:

- (1) Portfolio performance;
- (2) SBA operations management;
- (3) Credit administration; and
- (4) Compliance with Loan Program Requirements.

(b) *On-site examinations.* SBA may conduct safety and soundness examinations of SBA Supervised Lenders, except SBA will not conduct safety and soundness examinations of Other Regulated SBLCs under §§120.1510 and 1511. The on-site safety and soundness examination may include, but is not limited to, an evaluation of:

- (1) Capital adequacy;
- (2) Asset quality (including credit administration and allowance for loan losses);
- (3) Management quality (including internal controls, loan portfolio management, and asset/liability management);
- (4) Earnings;