

§ 120.1704

13 CFR Ch. I (1–1–10 Edition)

(2) Conducts its business in accordance with SBA regulations and accepted securities or banking industry practices, ethics, and standards;

(3) Maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines of the regulatory body governing its activities; and

(4) Has not been suspended or terminated from the Program by SBA.

§ 120.1704 Pool Loans eligible for Pooling.

(a) *General Pool Loan eligibility requirements.* For a First Lien Position 504 Loan to be eligible for Pooling it must:

(1) Be a loan that is:

(i) A Third Party Loan as defined in § 120.801(c)(3);

(ii) Made by a private sector lender acceptable to SBA in its sole discretion; and

(iii) Secured by a first lien on the Project Property as defined in § 120.801 of this chapter;

(2) Be part of a 504 financing that is comprised of only one Third Party Loan and one CDC 504 loan; the CDC 504 loan must be funded by a Debenture that was been sold on or after February 17, 2009;

(3) Be Current and have been Current for the six-month-period immediately prior to the date the Pool is formed or for the life of the Pool Loan, whichever time period is shorter;

(4) Have been made and closed in a commercially reasonable manner, consistent with prudent lending standards;

(5) Be part of a completed 504 financing, funded by a 504 debenture, which means that the Pool Loan must be fully disbursed and the debenture funding the related loan by a CDC must have been sold on or after February 17, 2009; and

(6) Not be:

(i) To a business deriving more than one-third of its gross annual revenue from legal gambling activities;

(ii) To a casino, gambling establishment, or casino hotel;

(iii) For financing the acquisition, construction or renovation of an aquarium, zoo, golf course, or swimming pool; or

(iv) To a business covered by a six-digit North American Industry Classification System (NAICS) code for casinos—713210 (“Casinos (Except Casino Hotels)”); casino hotels—721120 (“Casino Hotels”); other gambling institutions—713290 (“Other Gambling Industries”); golf courses—713910 (“Golf Courses and Country Clubs”); or aquariums and zoos—712130 (“Zoos and Botanical Gardens”).

(b) *SBA review of a Pool Loan prior to pool formation.* SBA has the right to review any Pool Loan before a Loan Interest in it is added to a Pool, and SBA may prohibit the Pool’s formation as proposed based on SBA’s review in SBA’s sole discretion. In the event SBA decides to review Pool Loan documents related to a Loan Interest prior to the requested Pool formation, that Loan Interest may not be added to the Pool until SBA reviews and approves the Pool Loan for such purpose. Copies of Pool Loan documents related to underwriting and origination, and any other Pool Loan-related documents SBA may, in its sole discretion, request to review in writing, must be sent to SBA’s Sacramento Pool Loan Processing Center. The Pool Originator must identify and SBA must review Pool Loan documents before a Loan Interest is added to a Pool if:

(1) The Pool Loan is to a business within NAICS code 713940 covering Fitness and Recreational Sports Centers; (If SBA determines that a Pool Loan has had any of its proceeds used for any of the restricted purposes listed above, the Pool Loan will be prohibited from being part of a Pool.)

(2) The Pool Loan was part of a 504 financing involving a 504 loan that was processed under SBA’s Premier Certified Lenders Program; or

(3) The Project the Pool Loan financed included the refinancing of existing debt owed to the Seller or Third Party Lender (not including interim financing associated with the Project).

§ 120.1705 Pool formation requirements.

(a) *Initiation of Pool formation.* Only an entity approved by SBA to be a Pool Originator under the Program that