guidance concerning properly establishing, funding and reporting a PCLP Loan Loss Reserve Fund (LLRF).

(3) Substantially comply with all Loan Program Requirements.

(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 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 reimburse-
ment 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 depositary institution. The control agreement must include provisions requiring the depositary 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 that will readily facilitate reconciliation of the amount maintained in the LLRF with the amount required to meet a PCLP CDC’s Exposure for its entire portfolio of PCLP Debentures.

(g) Withdrawal of excess funds. Interest and other funds in the LLRF that exceed the required minimums as set forth in paragraph (b) of this section, within the time frames set forth in paragraph (e) of this section, accrue to the benefit of the PCLP CDC. PCLP CDCs are authorized to withdraw excess funds, including interest, from the LLRF if such funds exceed the required minimums set forth in paragraph (b) of this section. The PCLP CDC must forward requests for withdrawals to the Lead SBA Office, which will verify the existence and amount of excess funds and notify the financial institution to transfer the excess funds to the PCLP CDC.

(h) Determining SBA loss. When a PCLP CDC has concluded the liquidation of a defaulted 504 loan made with the proceeds of a PCLP Debenture and has submitted a liquidation wrap-up report to SBA, or when SBA otherwise determines that the PCLP CDC has exhausted all reasonable collection efforts with respect to that 504 loan, SBA will determine the amount of the loss to SBA. SBA will notify the PCLP CDC of the amount of its reimbursement obligation to SBA (if any) and will explain how SBA calculated the loss.

1. If the PCLP CDC agrees with SBA’s calculations of the loss, it must reimburse SBA for ten percent of the amount of that loss no later than 30 days after SBA’s notification to the PCLP CDC of the CDC’s reimbursement obligation.
2. If the PCLP CDC disputes SBA’s calculations, it must reimburse SBA for ten percent of any loss amount that is not in dispute no later than 30 days after SBA’s notification to the PCLP CDC of the CDC’s reimbursement obligation. No later than 30 days after SBA’s notification, the PCLP CDC may submit to the D/FA or his or her delegate a written appeal of any disagreement regarding the calculation of SBA’s loss. The PCLP CDC must include with that appeal an explanation of its reasons for the disagreement. Upon the D/FA’s final decision as to the disputed amount of the loss, the PCLP CDC must promptly reimburse SBA for ten percent of that amount.

1. Reimbursing SBA for loss. A PCLP CDC may use funds in the LLRF or other funds to reimburse SBA for the PCLP CDC’s Exposure on a defaulted PCLP Debenture. If a PCLP CDC does not satisfy the entire reimbursement obligation within 30 days after SBA’s notification to the PCLP CDC’s of its reimbursement obligation, SBA may cause funds in the LLRF to be transferred to SBA in order to cover the PCLP CDC’s Exposure, unless the PCLP CDC has filed an appeal under paragraph (h)(2) of this section.
§ 120.848 Requirements for 504 loan processing, closing, servicing, liquidating, and litigating by PCLP CDCs.

(a) General. In processing closing, servicing, liquidating and litigating 504 loans under the PCLP ("PCLP Loans"), the PCLP CDC must comply with Loan Program Requirements and conduct such activities in accordance with prudent and commercially reasonable lending standards.

(b) Documentation of decision making. For each PCLP Loan, the PCLP CDC must document in its files the basis for its decisions with respect to loan processing, closing, servicing, liquidating, and litigating.

(c) Processing requirements. SBA expects PCLP CDCs to handle most 504 loan processing situations, although SBA may require that the PCLP CDC process 504 loans involving complex or problematic eligibility issues through the SBA using standard 504 loan processing procedures. The PCLP CDC is responsible for properly determining borrower creditworthiness and establishing the terms and conditions under which the PCLP Loan will be made. The PCLP CDC also is responsible for properly undertaking such other processing actions as SBA may delegate to the PCLP CDC.

(d) Submission of loan documents. A PCLP CDC must notify SBA of its approval of a 504 loan by submitting to SBA’s PCLP Loan Processing Center all documentation required by SBA, including SBA’s PCLP eligibility checklist, signed by an authorized representative of the PCLP CDC. The PCLP Loan Processing Center will review these documents to determine whether the PCLP CDC has identified any problems with the PCLP Loan approval, and whether SBA funds are available for the PCLP Loan. If appropriate, the PCLP Loan Processing Center will notify the PCLP CDC of the loan number assigned to the loan.

(e) Loan and Debenture closing. After receiving notification from SBA PCLP Loan Processing Center, the PCLP CDC is responsible for properly undertaking all actions necessary to close the PCLP Loan and Debenture in accordance with the expedited loan closing procedures applicable to a Priority CDC and with §120.960.

(f) Servicing, liquidation and litigation responsibilities. The PCLP CDC generally must service, liquidate and litigate its entire portfolio of PCLP Loans, although SBA may in certain circumstances elect to handle such duties with respect to a particular PCLP Loan or Loans. Additional servicing and liquidation requirements are set forth in subpart E of this part.

(g) Making a 504 loan previously considered by another CDC. A PCLP CDC also may utilize its PCLP status to process a 504 loan application from an applicant whose application was declined or rejected by another CDC operating in that same Area of Operations, if the applicant is located within that area and as long as SBA has not previously declined that applicant’s 504 loan application. This may include the processing of a 504 loan application from an applicant that has withdrawn its application from another CDC.