

Small Business Administration

§ 120.862

ASSOCIATE DEVELOPMENT COMPANIES (ADCs)

§ 120.850 Expiration of Associate Development Company designation.

The designation of Associate Development Company (ADC) will cease to exist on January 1, 2004. After that date, former ADCs may continue to contract with CDCs as Lender Service Providers (see part 103 of this chapter) or to perform other services.

[68 FR 57984, Oct. 7, 2003]

OTHER CDC REQUIREMENTS

§ 120.851 CDC ethical requirements.

CDCs and their Associates must act ethically and exhibit good character. They must meet all of the ethical requirements of §120.140. In addition, they are subject to the following:

(a) Any benefit flowing to a CDC's Associate or his or her employer from activities as an Associate must be merely incidental (this requirement does not prevent an Associate or an Associate's employer from providing interim financing as described in §120.890 or Third Party Loans as described in §120.920, as long as such activity does not violate §120.140); and

(b) A CDC's Associate may not be an officer, director, or manager of more than one CDC.

[68 FR 57984, Oct. 7, 2003]

§ 120.852 Restrictions regarding CDC participation in the Small Business Investment Company (SBIC) program and the 7(a) loan program.

(a) *7(a) loan program.* A CDC must not invest in or be an Affiliate of a Lender participating in the 7(a) loan program described in §120.2(a). (For a definition of Affiliation, refer to §121.103 of this chapter.) CDCs that already are affiliated with state development companies approved by SBA under section 501 of Title V, as of November 6, 2003 may remain Affiliates.

(b) *SBIC program.* A CDC must not directly or indirectly invest in a Licensee (as defined in §107.50 of this chapter) licensed by SBA under the SBIC program authorized in Part A of Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.* A CDC that has an SBA-approved investment

in a Licensee as of November 6, 2003 may retain such investment.

[68 FR 57985, Oct. 7, 2003]

§ 120.853 Inspector General audits of CDCs.

The SBA Office of Inspector General may also conduct, supervise or coordinate audits pursuant to the Inspector General Act. The CDC must cooperate and make its staff, records, and facilities available.

[68 FR 57985, Oct. 7, 2003, as amended at 73 FR 75519, Dec. 11, 2008]

§ 120.857 Voluntary transfer and surrender of CDC certification.

A CDC may not transfer its certification or withdraw from the 504 program without SBA's consent. The CDC must provide a plan to SBA to transfer its portfolio. The portfolio may only be transferred with SBA's written consent. If a CDC desires to withdraw from the 504 program, it must forfeit its portfolio to SBA. SBA may conduct an audit of the transferring or withdrawing CDC.

[61 FR 3235, Jan. 31, 1996. Redesignated at 68 FR 57987, Oct. 7, 2003]

PROJECT ECONOMIC DEVELOPMENT GOALS

§ 120.860 Required objectives.

A Project must achieve at least one of the economic development objectives set forth in §120.861 or §120.862.

§ 120.861 Job creation or retention.

A Project must create or retain one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a Federal Register notice. Such Job Opportunity average remains in effect until changed by subsequent FEDERAL REGISTER publication.

[68 FR 57987, Oct. 7, 2003]

§ 120.862 Other economic development objectives.

A Project that achieves any of the following community development or public policy goals is eligible if the

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CDC's overall portfolio of 504 loans, including the subject loan, meets or exceeds the CDC's required Job Opportunity average. Loan applications must indicate how the Project will meet the specified economic development objective.

(a) Community Development goals:

(1) Improving, diversifying or stabilizing the economy of the locality;

(2) Stimulating other business development;

(3) Bringing new income into the community;

(4) Assisting manufacturing firms (North American Industry Classification System (NAICS), Sectors 31 " 33); or

(5) Assisting businesses in Labor Surplus Areas as defined by the Department of Labor.

(b) Public Policy goals:

(1) Revitalizing a business district of a community with a written revitalization or redevelopment plan;

(2) Expansion of exports;

(3) Expansion of small businesses owned and controlled by women as defined in section 29(a)(3) of the Act, 15 U.S.C. 656(a)(3);

(4) Expansion of small businesses owned and controlled by veterans (especially service-disabled veterans) as defined in section 3(q) of the Act, 15 U.S.C. 632(q);

(5) Expansion of minority enterprise development (see §124.103(b) of this chapter for minority groups who qualify for this description);

(6) Aiding rural development;

(7) Increasing productivity and competitiveness (retooling, robotics, modernization, competition with imports);

(8) Modernizing or upgrading facilities to meet health, safety, and environmental requirements; or

(9) Assisting businesses in or moving to areas affected by Federal budget reductions, including base closings, either because of the loss of Federal contracts or the reduction in revenues in the area due to a decreased Federal presence.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2118, Jan. 13, 1999; 68 FR 57987, Oct. 7, 2003]

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LEASING POLICIES SPECIFIC TO 504 LOANS

§ 120.870 Leasing Project Property.

(a) A Borrower may use the proceeds of a 504 loan to acquire, construct, or modify buildings and improvements, and/or to purchase and install machinery and equipment located on land leased to the Borrower by an unrelated lessor if:

(1) The remaining term of the lease, including options to renew, exercisable only by the lessee, equals or exceeds the term of the Debenture;

(2) The Borrower assigns its interest in the lease to the CDC with right of reassignment to SBA; and

(3) The 504 loan is secured by a recorded lien against the leasehold estate and other collateral as necessary.

(b) If the Project is for new construction, the Borrower may lease long term up to 20 percent of the Rentable Property in the Project to one or more tenants if the Borrower immediately occupies at least 60 percent of the Rentable Property, plans to occupy within three years some of the remaining space not immediately occupied and not leased long term, and plans to occupy all of the remaining space not leased long term within ten years.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2118, Jan. 13, 1999; 68 FR 57987, Oct. 7, 2003]

§ 120.871 Leasing part of Project Property to another business.

(a) The costs of interior finishing of space to be leased out to another business are not eligible Project costs.

(b) Third-party loan proceeds used to renovate the leased space do not count towards the 504 first mortgage requirement or the Borrower's contribution.

LOAN-MAKING POLICIES SPECIFIC TO 504 LOANS

§ 120.880 Basic eligibility requirements.

In addition to the eligibility requirements specified in subpart A, to be an eligible Borrower for a 504 loan, a small business must:

(a) Use the Project Property (except that an Eligible Passive Company may lease to an Operating Company); and