(1) Government organizations responsible for economic development in the Area of Operations;

(2) Financial institutions that provide commercial long term fixed asset financing in the Area of Operations;

(3) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, universities, or small business development centers (as defined in section 2(1) of the Act, 15 U.S.C. 644(a)(1)); and

(4) Businesses in the Area of Operations.

(c) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

§ 120.823 CDC Board of Directors.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. No person who is a member of a CDC’s staff may be a voting member of the Board except for the CDC manager. The Board Members must be responsible officials of the organizations they represent and at least one member other than the CDC manager must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least 5 Directors authorized to vote. When the Board votes on SBA loan approval or servicing actions, at least one Board Member with commercial loan experience acceptable to SBA, other than the CDC manager, must be present and vote. There must be no actual or apparent conflict of interest with respect to any actions of the Board.

(a) The Board may establish a Loan Committee of non-Board Members that reports to the Board. Loan Committee members must include at least one member with commercial lending experience acceptable to SBA. All members of the Loan Committee must live or work in the Area of Operations of the State where the 504 project they are voting on is located unless the project falls under one of the exceptions listed in Sec. 120.839, Case-by-case extensions. No CDC staff may serve on a Loan Committee. A quorum must have at least five committee members authorized to vote. The CDC’s Board must ratify the actions of any Loan Committee. There must be no actual or apparent conflict of interest with respect to any actions of the Loan Committee.

(b) If a CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must have a Loan Committee for each State.

§ 120.824 Professional management and staff.

A CDC must have full-time professional management, including an Executive Director (or the equivalent) managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process loan applications, close loans, service, and, if authorized by SBA, liquidate the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations. CDCs may obtain, under written contract, management, marketing, packaging, processing, closing, servicing or liquidation services provided by qualified individuals and entities under the following circumstances:

(a) The CDC must have at least one salaried professional employee that is employed directly (not a contractor or an Associate of a contractor) full-time to manage the CDC. The CDC manager must be hired by the CDC’s board of directors and subject to termination only by the board. A CDC may petition SBA to waive the requirement of the manager being employed directly if:

(1) Another non-profit entity that has the economic development of the CDC’s Area of Operations as one of its principal activities will contribute the management of the CDC, and the management contributed by the other entity also may work on and operate that entity’s economic development programs, but must be available to small
§ 120.825 Financial ability to operate.

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors). Any funds generated from 503 and 504 loan activity by a CDC remaining after payment of staff and overhead expenses must be retained by the CDC as a reserve for future operations or for investment in other local economic development activity in its Area of Operations. If a CDC is operating as a Multi-State CDC, it must maintain a separate accounting for each State of all 504 fee income and expenses and provide, upon SBA’s request, evidence that the funds resulting from its Multi-State CDC operations are being invested in economic development activities in each State in which they were generated.

[65 FR 42633, July 11, 2000]

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with the following requirements:

(a) In general. CDCs must meet all 504 Loan Program Requirements. In its Area of Operations, a CDC must market the 504 program, package and process 504 loan applications, close and service 504 loans, and if authorized by SBA, liquidate and litigate 504 loans. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit all reports required by SBA.

(b) Operations and internal controls. Each CDC’s board of directors must adopt an internal control policy which provides adequate direction to the institution for effective control over and accountability for operations, programs, and resources. The board adopted internal control policy must, at a minimum:

(1) Direct management to assign the responsibility for the internal control function (covering financial, credit, credit review, collateral, and administrative matters) to an officer or officers of the CDC;

(2) Adopt and set forth procedures for maintenance and periodic review of the internal control function;