

5. Amend § 1427.16 by adding paragraph (b)(3) as follows:

**§ 1427.16 Reconciliation of cotton.**

\* \* \* \* \*

(b) \* \* \*

(3) Effective for the 2006 and subsequent crops of cotton, CCC may approve a request for relocation of cotton loan collateral, submitted by a producer or a properly designated agent of the producer, and approved by the receiving warehouse operator. Such relocation shall be based on, but are not limited to, the original loan rate, repayment rate, and other terms and conditions of the original loan storage location. Any charges, fees, costs, or expenses incident to such reconcentration or transfer shall be paid by the requestor of such transfer.

6. Amend § 1427.19 by revising paragraphs (h)(1) and (h)(2) to read as follows:

**§ 1427.19 Repayment of loans.**

\* \* \* \* \*

(h) \* \* \*

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer of agent or subsequent agent authorized by the producer in the manner prescribed by CCC, for the period the cotton was pledged as collateral for such loan:

(i) The warehouse storage charges which have accrued, and

(ii) With respect to the 2006 and subsequent-crops of upland cotton, if the entire quantity of the loan was stored inside an approved cotton warehouse during the entire period of the loan, the storage charges that accrued based on a maximum monthly storage-credit payment rate will not exceed the rate used in 2005 at the location where the 2006 and 2007 crops are stored, not to exceed \$2.15. With respect to those producers who store cotton at a warehouse that was not in existence in 2005, CCC will assign the county average credit that was used in 2005. CCC shall not pay any storage charges if at any time while pledged as collateral for such loan the cotton was stored outside.

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized by the producer in the manner prescribed by CCC, without regard to any warehouse charges that accrued before the cotton was pledged for loan:

(i) That portion of the warehouse storage charges that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit the loan to be repaid at the adjusted world price; and

(ii) With respect to the 2006 and subsequent crops of upland cotton, CCC shall not pay any storage charges if at any time while pledged as collateral for such loan the cotton was stored outside. If the entire quantity of the loan was stored inside an approved cotton warehouse during the entire period of the loan, that portion of the warehouse storage charges that accrued during the period the cotton was pledged for loan based on a maximum monthly storage-credit payment rate will not exceed the rate used in 2005 at the location where the 2006 and 2007 crops are stored, not to exceed \$2.15. With respect to those producers who store cotton at a warehouse that was not in existence in 2005, CCC will assign the county average credit that was used in 2005; or

Signed in Washington, DC, on May 18, 2006.

**Teresa C. Lasseter,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6-8161 Filed 5-25-06; 8:45 am]

**BILLING CODE 3410-05-P**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 120**

**RIN 3245-AF23**

**Business Loan Programs; Premier Certified Lenders Program Alternative Loan Loss Reserve Pilot Program**

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (“SBA” or “the Administration”) proposes to amend its Premier Certified Lenders Program (“PCLP”) in accordance with recent statutory amendments to the PCLP. Presently, under the PCLP, participating Certified Development Companies (“CDCs”) have increased authority in connection with making and servicing loans made under SBA’s development company loan program (“504 Program”). One PCLP requirement relates to a loan loss reserve fund (“LLRF”) which a CDC participating in the PCLP (“PCLP CDC”) must maintain to cover losses it may incur in connection with the 504 Program loans (“504 Loans”) it has made under the PCLP (“PCLP loans”). Recent statutory

changes to the PCLP include two pilot programs related to PCLP LLRF requirements. One pilot (“Pilot 1”) changes LLRF requirements by requiring the value of an LLRF to equal 1 percent of the combined outstanding balances of each debenture issued by a PCLP CDC to fund a PCLP loan (“PCLP Debenture”), instead of the combined original face value of those PCLP Debentures. Another pilot (“Pilot 2”) authorizes certain PCLP CDCs with significantly large LLRFs to elect to meet alternative LLRF requirements in lieu of certain existing PCLP LLRF requirements. The proposed regulations would implement requirements, procedures, and guidelines relating to Pilot 1 and Pilot 2.

**DATES:** SBA must receive comments on or before July 25, 2006.

**ADDRESSES:** You may submit comments, identified by RIN number, by any of the following methods: (1) Federal eRulemaking Portal: <http://www.regulations.gov>; (2) E-mail: [Charles.Thomas@SBA.gov](mailto:Charles.Thomas@SBA.gov). Include RIN Number in the subject line of the message; (3) Fax: (202) 205-7722; (4) Mail: Charles Thomas, Director, Program Development Division, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; (5) Hand Delivery/Courier: 409 3rd Street, SW., Washington, DC 20416, c/o Charles Thomas.

**FOR FURTHER INFORMATION CONTACT:** Charles Thomas, Director, Program Development Division, Office of Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, (202) 205-6656, [Charles.Thomas@SBA.gov](mailto:Charles.Thomas@SBA.gov).

**SUPPLEMENTARY INFORMATION:**

**Statutory Basis for This Proposed Rulemaking**

SBA must amend the PCLP LLRF regulatory requirements established pursuant to Title V (“Title V”) of the Small Business Investment Act of 1958, as amended (the “Act”), to conform with amendments to Title V contained in Public Law 108-232, enacted on May 28, 2004 (“Pilot 1 and Pilot 2”). Pilot 1 and Pilot 2 were enacted with the ultimate goal of having each PCLP LLRF more accurately correspond to the risk of loss it secures.

**Overview of the PCLP and the Basis for Pilot 1 and Pilot 2**

While access to capital is vital to the success of small businesses, many find it difficult to access financing, particularly long term financing. SBA’s lending programs address these

difficulties by providing a critical stream of funding to small businesses. Last year, SBA loan programs supplied \$21 billion in capital, accounting for 40 percent of all long-term small business lending to this country's entrepreneurs. One of SBA's most important loan programs is the 504 Program.

The 504 Program provides small businesses with long-term, fixed-rate financing to acquire major assets, such as heavy machinery and equipment, land, and buildings, with the overall goal of enhancing the economic development of a particular community or region. A typical 504 Loan has three components: (1) A loan from a private-sector lender, secured by a senior lien, covering up to 50 percent of the project cost; (2) a loan from an SBA authorized Certified Development Company, secured by a junior lien position, covering up to 40 percent of the cost; and (3) an equity contribution of at least 10 percent from the small business. The CDC obtains the funds it needs to make its loan to the small business by selling a debenture that is 100 percent guaranteed by SBA. The maximum SBA debenture under the 504 Program is generally \$1.5 million, but it is \$2.0 million if the proceeds of the 504 Loan will be directed toward certain public policy goals set forth in Title V, and \$4.0 million when the project is for a small manufacturer as defined in Title V. In FY 2005, SBA approved about \$5 billion in lending to approximately 9,200 small businesses through the 504 Program.

Currently, under non-PCLP 504 Loan processing procedures, SBA analyzes each loan proposal to determine its creditworthiness and its conformance with SBA's regulations and policies, which are designed to control program risk. As the 504 Program expanded, however, SBA's budget constraints limited its capacity to process and service expeditiously the expanding number of 504 Loans. The PCLP was thus conceived to transfer substantial 504 Program lending and servicing authority to qualified CDCs, thereby reducing the demand for SBA resources and improving 504 Loan turn-around time. However, to ensure adequate program oversight and to protect the Federal Government from undue risk of loss, PCLP CDCs were required to: (1) Meet and maintain several additional qualifications and standards; (2) implement certain critical management controls; (3) reimburse SBA for 10 percent of any loss SBA incurred in connection with any of its PCLP Debentures; and (4) contribute and maintain an SBA-controlled LLRF equal to one percent of the aggregate of the

face values of each of its PCLP Debentures.

Participation in PCLP has expanded gradually since its 1997 inception to nearly 30 PCLP CDCs, which collectively accounted for approximately \$720 million in 504 lending in FY 2005. Losses under the program have been minimal thus far. As noted above, each participant must maintain an LLRF equal to one percent of the sum of the face values of each of its outstanding PCLP Debentures, even as the outstanding balances of those PCLP Debentures decrease and, consequently, the risk of loss to SBA relating to those Debentures decreases.

Pilot 1 and Pilot 2 were enacted so that PCLP LLRFs would be more accurately aligned with the true level of risk associated with the PCLP Debentures those LLRFs secure. Pilot 1 reduces the amount a PCLP CDC is required to maintain in its LLRF to one percent of the aggregate of the outstanding balances of its PCLP Debentures rather than one percent of the aggregate of the original face value amounts of those PCLP Debentures. Pilot 2 allows a PCLP CDC, which meets certain requirements, to maintain its LLRF under an alternative set of LLRF requirements. Under Pilot 2, the amount of reserves required to be maintained in an LLRF will be determined by a sound risk assessment methodology, which must be evaluated and certified by an independent auditor.

#### Pilot 1

Pilot 1 is a two-year pilot program initiated because existing PCLP statutory requirements do not take into account that SBA's risk of loss decreases as each PCLP Debenture is paid down. PCLP Debentures are issued for either a ten- or twenty-year term and are amortized over the duration of the term. As the PCLP CDC makes its semi-annual payments on its PCLP Debentures, the outstanding balance is reduced; however, prior to Pilot 1 the PCLP CDC could only decrease its LLRF after one of the PCLP Debentures secured by its LLRF was completely paid off. Now, in accordance with Pilot 1, each PCLP CDC will be permitted to adjust its LLRF downward to equal one percent of the sum of the outstanding balances of its PCLP Debentures. Congress expects that Pilot 1 will encourage additional CDCs to participate in the PCLP.

In addition, Congress anticipates that Pilot 1 will encourage PCLP CDCs to use the funds withdrawn from its LLRF to promote more local economic development.

#### Pilot 2

Pilot 2 allows certain PCLP CDCs with large LLRFs to elect to calculate the appropriate funding of their LLRF using a risk-based approach; provided, however, that the minimum amount of the LLRF determined by this method equals or exceeds \$100,000. A Pilot 2 participant must use an appropriate and effective process to maintain acceptable funding of its LLRF. The American Institute of Certified Public Accountants ("AICPA") and the Federal Financial Institutions Examination Council ("FFIEC") are recognized by SBA to have published substantial guidance on the Allowances for Loan and Lease Losses ("ALLL") methodologies and documentation used by the lending industry. SBA believes that these methodologies will provide an appropriate set of guidelines for independent auditors calculating LLRF funding requirements for Pilot 2 participants. In addition, SBA recognizes that the United States Department of Treasury, Office of Thrift Supervision ("OTS"), has established regulations relating to the qualifications of auditors working for institutions subject to OTS oversight. SBA believes that those guidelines are also suitable for independent auditors making Pilot 2 calculations. Accordingly, SBA proposes that a Pilot 2 participant be required to have its LLRF determined in accordance with AICPA and FFIEC ALLL methodologies by an independent auditor that meets the OTS auditor requirements referenced above. Due to the lack of portfolio diversification of CDC loan portfolios in terms of region, industry, and asset size, and the delegation of additional authority to participants, Congress added additional eligibility requirements applicable to Pilot 2 participants. For example, a Pilot 2 participant must submit a certification stating that its LLRF is sufficient to protect the Federal Government from loss due to inadequate LLRFs. The certification must be signed by the head of the participating PCLP CDC and its independent auditor and a new certification must be submitted for each quarter of Pilot 2 participation. The proposed regulations would require that the certification be adequately supported by methodologies and documentation which are consistent with the FFIEC's Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions dated July 2, 2001, as published in 66 FR 35629, July 6, 2001.

Perhaps most significantly, a PCLP CDC electing to participate in Pilot 2

would have its loss exposure related to PCLP Debentures increased from 10 percent to 15 percent for each PCLP Debenture issued while it was participating in Pilot 2. Congress determined that this increase might be a useful safety measure that could help balance unanticipated risks associated with Pilot 2.

#### Section-by-Section Analysis

Section 120.847(a) would be amended by creating subsections (a)(1) and (a)(2), with (a)(1) adding new definitions applicable to Pilot 1 and Pilot 2 and (a)(ii) containing the general PCLP CDC LLRF information as amended to include reference to Pilot 2 requirements.

Section 120.847(g) would be amended to incorporate Pilot 1 LLRF withdrawal options.

SBA would amend section 120.847(j) governing insufficient funding of the LLRF to add guidance on SBA notification of an LLRF deficiency to a Pilot 2 participant.

Section 120.848 would be redesignated as § 120.849.

A new § 120.848 would be added to incorporate Pilot 2 provisions, with the subsections covering various authorities, requirements, procedures, and guidelines applicable to Pilot 2. Subsection (a) references regulation sections applicable to Pilot 2 and states that Pilot 2 participants must reimburse SBA for 15 percent of any loss sustained as a result of a default in the payment of principal or interest on a PCLP Debenture issued by the PCLP, and guaranteed by SBA, during participation in Pilot 2 and 10 percent of any such loss related to any of its other PCLP Debentures. Subsection (b) sets forth the requirements a PCLP CDC must meet to participate in Pilot 2. In addition to the statutory requirements, SBA proposes specific guidelines relating to the statutory requirement that a prospective Pilot 2 participant has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of PCLP loans. Specifically, SBA proposes that LLRF funding requirements made under Pilot 2 follow GAAP, AICPA, FFIEC and SBA Office of Lender Oversight guidelines for calculating appropriate allowances for loan and lease losses. Proposed subsection (b) would also provide for (in paragraph (4)) a performance requirement directed at a Pilot 2 participant meeting four or more specified risk management benchmarks. This is consistent with statutory language. In addition to the benchmark indicator, SBA is considering whether the performance requirement in the

final rule should include that a Pilot 2 participant's risk rating (as determined by SBA pursuant to published guidance) be at a level acceptable to SBA.

Subsection (c) sets forth the statutory requirements applicable to independent auditors used by Pilot 2 participants. The statute requires the independent auditor to "be approved by SBA." Under the proposed rule, SBA's Bureau of PCLP Oversight would approve the independent auditor. SBA also proposes to include in subsection (c) the qualifications for independent auditors who will be acceptable to SBA. SBA used as a basis for these proposed qualifications the qualifications OTS requires for the independent public accountants it employs to audit financial statements, applications, or procedures of institutions for which the OTS has oversight responsibility. SBA believes these qualifications are broad enough to apply usefully to the independent auditors who will be carrying out the agreed upon procedures applicable to Pilot 2. The subsection also requires that a Pilot 2 participant that changes auditors during a Pilot 2 Calendar Quarter provide the reasons for the change to the Associate Administrator, Office of Lender Oversight ("AA/OLO") within 30 days of the change.

Subsection (d) states that, to elect to participate in Pilot 2, a PCLP CDC must notify the Associate Administrator, Office of Financial Assistance ("AA/FA") and the AA/OLO in writing and include clear documentation that it meets the requirements set forth in subsection (b) and that its auditor meets the requirements set forth in subsection (c).

Subsection (e) would set forth the statutorily-determined Pilot 2 participation periods: participation in Pilot 2 must be by calendar quarter. Subsection (f) would require a Pilot 2 participant to make any necessary contributions to its LLRF necessary to equal the amount determined by the independent auditor in accordance with Pilot 2 requirements or \$100,000 if the amount determined by the independent auditor is less than \$100,000.

Subsection (g) would set forth procedures related to the statutorily-determined Pilot 2 certification requirements applicable to the Pilot 2 participant and its auditor, and would permit the Pilot 2 participant to withdraw funds from its LLRF if the funds exceed Pilot 2 requirements. The statute states that a Pilot 2 participant which decides not to participate in the pilot in the following calendar quarter must make a contribution to its LLRF in such an amount as SBA may determine.

Subsection (g) proposes to allow a Pilot 2 participant to adjust its LLRF to meet Pilot 1 requirements within 45 days after its Pilot 2 participation or submit to SBA a proposed recontribution schedule within 30 days after its Pilot 2 participation. Subsection (g) would give SBA the authority to reject a proposed recontribution schedule and to require the PCLP CDC to follow an SBA-determined recontribution schedule if, in its sole discretion, SBA determines that the recontribution schedule submitted by the PCLP CDC would cover the exposure related to all of its outstanding PCLP Debentures, or if the PCLP CDC fails to submit a recontribution schedule, within the 30-day time frame.

Subsection (h) would provide SBA with the authority to remove a PCLP CDC from Pilot 2 participation if that PCLP CDC fails to meet Pilot 2 requirements. In such event, subsection (h) would authorize SBA to take actions necessary to ensure that the LLRF covers the exposure related to all of its outstanding PCLP Debentures, including, but not limited to, the right to require the PCLP CDC to follow an SBA-determined recontribution schedule.

Finally, subsection (i) would reference the statutorily created Bureau of PCLP Oversight. Under the proposed rule, the Bureau may review the Pilot 2 participant's process for analyzing the risk of loss associated with the Pilot 2 participant's outstanding PCLP Debentures (and the underlying PCLP loans) and make a determination as to whether the process is consistent with ALLL Methodologies and Documentation and in accord with GAAP, AICPA, FFIEC, and SBA Office of Lender Oversight guidance/standards. A negative determination could result in SBA finding the Pilot 2 participant ineligible to participate in Pilot 2 under proposed section 120.848(b) or serve as a basis for removal under proposed section 120.848(h).

#### **Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this final rule has no federalism implications warranting preparation of a federalism assessment.

This proposed rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The proposed rule does not have retroactive or preemptive effect.

The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action under Executive Order 12866. The statutory amendments to PCLP LLRF requirements (Pilot 1 and Pilot 2) revise existing PCLP LLRF requirements and require SBA to publish regulations implementing those amendments. The amendments and these regulations are intended to: (1) Establish and test alternative LLRF concepts that may more accurately reflect the potential risks and the potential losses inherent in the PCLP; (2) Ensure LLRF alternatives are well founded by incorporating methodologies and standards that correspond to the well established principles and standards used by commercial lenders for ALLL and that have been approved by the FFIEC and the AICPA; (3) Free up PCLP loss reserve capital to enhance PCLP CDC operational flexibility and to support additional 504 lending as well as other local economic development activities; and (4) Ensure each LLRF is adequate to cover the exposure related to all of the outstanding PCLP Debentures of the PCLP CDC.

These objectives are embodied in two-year pilot alternative LLRF options which are to be examined and evaluated. Together with the existing LLRF requirements, these pilot alternatives represent the most reasonable and most viable LLRF alternatives, at least until additional longer term program performance data become available and provide the basis for a comprehensive broad-based assessment of the PCLP and the adequacy of its LLRFs.

The two pilots are based on reasonable, prudent, and well established principles and standards, many of which have been developed and tested over the course of several decades by the commercial lending industry and have been generally accepted and codified by the Federal Financial Institutions Examination Council (FFIEC), whose member Federal agencies have various oversight responsibilities over the Nation's banking and thrift institutions. However, while these pilot concepts are based on sound loss reserve principles and standards, they are new to SBA and the PCLP. Consequently, SBA has little empirical data on the concepts and can therefore provide only broad and

general estimates of their costs and benefits. Also, while these alternatives will generally reduce the amounts that PCLP CDCs must retain in their LLRFs, it should be noted that neither pilot reduces the amount a PCLP CDC must reimburse SBA as a result of a default under the PCLP, so the pilots' implications for SBA are limited to the risk that a PCLP CDC will not have adequate LLRFs or other additional resources with which to reimburse the prescribed amount to SBA. (Pilot 2 actually increases the amount the PCLP CDC must reimburse SBA as a result of a loss relating to the PCLP Debentures issued and guaranteed during the PCLP CDC's Pilot 2 participation.) Finally, while SBA recognizes that prudent lending and adequate LLRFs sufficient to control program risk are integral to the PCLP and its long-term viability, the PCLP is, as part of SBA's 504 Program, a zero subsidy loan program. As a result, any increased loss rate experienced by SBA under PCLP would translate into a change to the 504 Program's subsidy model and ultimately the fees paid by the borrowers and the lenders participating in the program; it is extremely unlikely that it would affect or increase Federal program subsidies because any increased losses are expected to be covered by increases in program fees only.

Pilot 1 allows each PCLP CDC to reduce its LLRF based on the decreasing outstanding balance of its PCLP Debentures as opposed to maintaining a LLRF equal to one percent of the original amount of all of its PCLP Debentures. SBA anticipates that most if not all of the PCLP CDCs will take advantage of this option. Following discussions with the CDC industry, SBA estimates that the costs incurred by PCLP CDCs of adopting Pilot 1 would be relatively insignificant, comprising less than \$1,000 for each PCLP CDC for minor modifications to internal control systems used to calculate LLRF requirements.

With respect to anticipated benefits of Pilot 1 to PCLP CDCs, most (about 95 percent) of the amortized debentures issued under the PCLP are for a term of 20 years, with the vast majority of the initial debenture payments comprised of interest payments. Since its inception in FY 1997, approximately \$1.3 billion in debentures have been issued under the PCLP, and about \$11 million have thus aggregated in all PCLP LLRFs. SBA estimates that during the 2 years of Pilot 1, outstanding PCLP Debentures will total approximately \$1.8 billion, while the amounts PCLP CDCs will be required to maintain in their LLRFs under Pilot 1 will only increase to

approximately \$12 million. Without the LLRF changes mandated under Pilot 1, SBA estimates that about \$16 million would have otherwise been required to be maintained in the PCLP LLRFs. SBA therefore estimates that PCLP CDCs would collectively benefit under Pilot 1 with a reduction in PCLP LLRFs of about \$4 million. Following discussions with PCLP CDCs, the consensus was that the freed up \$4 million in LLRFs would generally be used to expand the marketing and delivery of the 504 Program, to support additional 504 lending, and to increase the local economic development activities of the CDC.

With respect to the potential costs and risks to SBA of Pilot 1, the \$4 million reduction in PCLP LLRFs could represent a slight increase in the risk to SBA that PCLP LLRFs would be inadequate to reimburse SBA for 10 percent of any SBA loss. However, given the historical availability of additional assets from which PCLP CDCs could reimburse SBA, combined with the extremely low PCLP loss rate of .28 percent for the program (from program inception), SBA believes that the increased risk of non-reimbursement to SBA under Pilot 1 would be insignificant. Additionally, SBA estimates that its internal costs for modifying the calculation of PCLP LLRF requirements would be insignificant, comprising just a few hours of computer programming.

Pilot 2, which also lasts 2 years, allows certain PCLP CDCs to estimate the required level of their LLRF funding using a risk-based approach. PCLP CDCs electing this option must have at least \$100,000 in their respective LLRFs, and they are required to use ALLL methodologies and documentation approved by the FFIEC and AICPA, which must in turn be certified by a qualified independent auditor meeting auditor qualification requirements used by OTS.

There currently are fewer than 10 PCLP CDCs that meet the requirements to participate in Pilot 2. Also, because Pilot 1 will reduce PCLP LLRF funding requirements and other CDC program enhancements recently instituted by SBA, the SBA believes very few PCLP CDCs may elect to participate in Pilot 2 during its 2-year duration. Additionally, the uncertainty about the permanence of Pilot 2 and its initial development and start up costs may also discourage participation. As a result, the aggregate costs and benefits of this 2-year pilot to the CDC industry are expected to be limited.

Following discussions with industry representatives, SBA estimates that the initial costs to a PCLP CDC for

developing and instituting Pilot 2's risk based LLRF methodology and reporting would be about \$8,000. Thereafter, annual costs for administering the LLRF would depend on the size and complexity of the PCLP CDC's portfolio. However, for a portfolio of about 500–600 PCLP loans, which SBA judges to be an average portfolio size for PCLP CDCs that might elect this option, SBA estimates that the annual cost would be about \$75,000. This includes internal costs of about \$27,000 for periodically assigning and/or reassessing the risk associated with each PCLP Debenture, about \$10,000 for management oversight and quality control of the risk assessment process, about \$5,000 for portfolio risk management and control, about \$30,000 annually to be paid to an independent auditor for the ALLL quarterly audit report, and about \$1,000 for developing and transmitting to SBA the PCLP CDC's required certification regarding the adequacy of the LLRF.

In addition to the costs for developing and maintaining the alternative LLRF methodology and reporting, participating PCLP CDCs, as noted above, are required to reimburse SBA for 15 percent of any SBA loss relating to Debentures issued and guaranteed during Pilot 2 participation, as opposed to the 10 percent applicable to its other PCLP Debentures. With historically low loss rates for the PCLP and following discussions with the industry, SBA estimates that the additional 5 percent reimbursement would cost a PCLP CDC with a portfolio of 500–600 loans less than \$5,000 annually.

With respect to the benefits to a PCLP CDC, Pilot 2 and its risk based LLRF methodology represents a new concept for SBA's 504 Program. As a result, SBA has no empirical data on how much a PCLP's LLRF could be reduced under this concept, so estimating the potential impact and benefits is difficult. However, following discussions with the industry, and based on preliminary data from simulating the application of an ALLL methodology to an existing PCLP portfolio of 500–600 504 loans, SBA estimates that a PCLP CDC participating in Pilot 2 could reduce its LLRFs from the existing LLRF requirement of about \$1.8 million to about \$500,000 under Pilot 2, thus freeing up about \$1.3 million from the LLRF for that PCLP CDC. Similar to Pilot 1, these funds would generally be used to expand the marketing and delivery of the 504 Program, support additional 504 lending, and increase the local economic development activities of the CDC.

With respect to the potential costs and risks to SBA of Pilot 2, SBA believes

that the estimated \$1.3 million reduction in a typical PCLP's LLRF would only marginally increase the risk to SBA that the LLRF would be inadequate to cover PCLP CDC reimbursement obligations to SBA as required under PCLP. SBA is optimistic that the certification by an independent auditor, which meets the proposed requirements and applies AICPA and FFIEC standards and methodologies to the ALLRF, will help ensure that a LLRF calculated pursuant to Pilot 2 would be commensurate with the risk inherent in the PCLP CDC's portfolio. Additionally, as with Pilot 1, PCLP CDCs have other assets with which to reimburse SBA which, combined with the extremely low PCLP loss rate of .28 percent, will further help mitigate the risk that SBA will not be reimbursed as required. Finally, Pilot 2 is a 2-year pilot and participation is expected to be extremely limited, further controlling the risk of loss to SBA. SBA does not foresee any significant additional costs to SBA, due to the level of responsibility vested with the independent auditor.

Based on the following analysis, SBA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601. SBA has determined that CDCs fall under the SBA size standard for NAICS 522298, All Other Nondepository Credit Intermediaries, which establishes \$6 million in average annual receipts as the maximum annual receipts for small entities. Approximately 5,440 credit intermediaries fall under that industry classification, about 4,990 of which are considered small. SBA's CDC Program currently comprises approximately 270 CDCs, nearly 30 of which participate in PCLP.

The proposed rule addresses two pilot programs. Pilot 1 allows each PCLP CDC to reduce its LLRF based on the decreasing balance of PCLP Debentures. Although all 270 CDCs are eligible to participate in the PCLP, SBA estimates that only the 30 CDCs that currently participate in the PCLP will likely take advantage of this option. Consequently, this rule will not impact a substantial number of the small entities.

Moreover, SBA does not believe that the costs associated with Pilot 1 will be significant. As noted in the cost benefits analysis, SBA estimates that the costs associated with Pilot 1 would be less than \$1,000 for each PCLP CDC, which is not a significant cost. SBA believes that this cost will be offset by the \$4 million aggregate reduction or a \$130,000 per PCLP CDC average reduction in the LLRF requirements.

Accordingly, SBA certifies that Pilot 1 will not have a significant economic impact on a substantial number of small entities.

Pilot 2 allows certain qualified PCLP CDCs to fund their LLRF using a risk-based approach. SBA estimates that less than 10 PCLP CDCs currently qualify to participate in Pilot 2, and that less than five will take advantage of this option during its 2-year pilot period. SBA therefore concludes that this rule will not affect a substantial number of small entities. However, as noted above, although the annual costs associated with the program would be about \$75,000, the reduction in the LLRFs requirements for those few PCLP CDCs that do elect to participate could be as much as \$1.3 million each. Finally, and as also noted above, participants in Pilot 2 would be required to reimburse SBA for 15 percent of any SBA loss related to a PCLP Debenture issued and guaranteed during participation in Pilot 2; the exposure relating to its other PCLP Debentures would remain 10 percent. With an historical loss rate of .28 percent for PCLP, this additional reimbursement obligation is not expected to be significant. As such, SBA certifies that Pilot 2 will not have a significant economic impact on a substantial number of small entities.

SBA has determined that the proposed rule, which comprises two pilot programs, imposes additional reporting requirements under the Paperwork Reduction Act, 44 U.S.C. Ch. 35 (PRA), with respect to Pilot 2, but no additional recordkeeping requirements for Pilot 1. SBA believes that only 5 or less PCLP CDCs will participate in Pilot 2. These participating PCLP CDCs and the auditors retained by them would be affected by the following information collections (as defined under the PRA).

#### **Auditor's Credential Information**

Under proposed § 120.848(c), the auditors retained by the PCLP CDCs to conduct the required Pilot 2 LLRF Certification must meet certain eligibility requirements established by SBA. The auditors and the PCLP CDCs must submit to SBA documentation regarding the auditors' credentials and qualifications for SBA's evaluation. We think that the total amount of time it would take 5 sets of auditors and PCLP CDCs to comply with this reporting requirement would be 30 hours [(5 auditors x 5 hours) + (5 PCLP CDCs x 1 hour)]. This estimated total is not annualized because, based on discussions with the industry on the average duration of relationships between CDCs and auditors, we anticipate that participants will only

respond to this collection one time at the beginning of the 2-year pilot program.

### PCLP CDCs Application to Participate in Pilot 2

Under proposed § 120.848(b), PCLP CDCs must meet certain eligibility requirements established by SBA to participate in Pilot 2. The PCLP CDC must submit a letter to SBA notifying the Agency of its interest in and qualifications for Pilot 2. We think that the total amount of time it would take 5 PCLP CDCs to comply with this reporting requirement would be 20 hours (5 PCLP CDCs × 4 hours). This estimated total is not annualized because we anticipate that participants will only respond to this collection one time at the beginning of the 2-year pilot program.

### Pilot 2 LLRF Certification

PCLP CDCs and their independent auditor must submit a Pilot 2 LLRF Certification, as defined by the proposed regulations, to SBA at the time of the PCLP CDC's application to participate in Pilot 2 and every quarter thereafter. SBA estimates that it would take each set of PCLP CDCs and auditors 380 hours annually to comply with this quarterly reporting requirement [(180 hours for the PCLP CDC) + (200 hours for the auditor)]. The total annual hourly burden for 5 sets of PCLP CDCs and their auditors would be 1900 hours (380 × 5).

SBA believes that these 3 information collections are necessary for SBA to satisfy its statutory duty to manage and oversee Pilot 2. SBA's management functions, as outlined in Public Law 108-232 and implemented by the proposed rule, are essential to reasonably protect Pilot 2 and the Agency from the risk of waste, fraud, and mismanagement.

An agency may not conduct or sponsor an information collection without prior approval from OMB. Accordingly, we are submitting the proposed information collections to OMB for review in accordance with the PRA. Comments on the proposed information collection should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC, 20503, Attention: David Rostker, Desk Officer for SBA.

### List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 120 as follows:

### PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), and 636(a), 696(3) and 697(a)(2).

2. Revise § 120.847 to read as follows:

#### § 120.847 Requirements for the Loan Loss Reserve Fund.

(a)(1) *Definitions.* The following terms have the same meaning where they are used in §§ 120.845 through 120.848:

(i) *AA/OLO* means SBA's Associate Administrator for the Office of Lender Oversight.

(ii) *AICPA* means the American Institute of Certified Public Accountants.

(iii) *ALLL Methodologies and Documentation* means methodologies followed, and supporting documentation prepared, by a lending institution to determine the amounts of the allowance for loan and lease losses and the provisions for loan losses for a loan portfolio.

(iv) *FFIEC* means the Federal Financial Institutions Examination Council.

(v) *GAAP* means generally accepted accounting principles.

(vi) *LLRF* means the loan loss reserve funds a PCLP CDC maintains in accordance with PCLP requirements to secure its loss exposure related to all of its outstanding PCLP Debentures.

(vii) *Pilot 1* means the temporary program established pursuant to section 508(c)(6)(B) of the SBIA giving authority to a PCLP CDC to withdraw from its LLRF, in accordance with the procedures set forth in paragraph (g) of this section, any amount in excess of 1 percent of the aggregate outstanding balances of all of its outstanding PCLP Debentures.

(viii) *Pilot 2* means the temporary program established pursuant to section 508(c)(7) of the SBIA which allows certain PCLP CDCs to maintain their respective LLRFs in accordance with a calculated risk-based approach, the terms and conditions of which are set forth in § 120.848.

(ix) *Pilot 2 Calendar Quarter* means any calendar quarter in which a PCLP CDC participates in Pilot 2.

(x) *Pilot 2 Independent Auditor* means an auditor which meets the requirements set forth in § 120.848 and is providing the auditor services related to a PCLP CDC's LLRF as described in that section.

(xi) *Pilot 2 LLRF Certification* means a certification, which the Executive

Director of the PCLP CDC and its Pilot 2 Independent Auditor must sign and submit to SBA's Administrator, with copies to the AA/FA and AA/OLO, stating:

(A) The amount the PCLP CDC needs to have in its LLRF to protect the Federal Government from risk of loss as calculated in accordance with Pilot 2 requirements (accompanied by the documentation necessary for SBA to assess the basis of the certification);

(B) That an amount equal to or greater than the amount established in accordance with paragraph (a)(1)(xi)(A) of this section is in the PCLP CDC's LLRF and shall remain there until adjustments are made pursuant to a new Pilot 2 LLRF Certification (see § 120.848(f)) or pursuant to requirements and procedures applicable after a PCLP CDC's participation in Pilot 2 ends (see § 120.848(g)); and

(C) That the PCLP CDC has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its outstanding PCLP Debentures (and the underlying PCLP loans) with ALLL Methodologies and Documentation in accord with AICPA guidelines, GAAP, and the FFIEC's Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions dated July 2, 2001, as published in 66 FR 35629, July 6, 2001.

(xii) *Pilot 2 Participation Period* shall mean a full calendar quarter as described in § 120.848(e).

(xiii) *SBIA* means the Small Business Investment Act of 1958, as amended.

(xiv) *Specified Risk Management Benchmarks* means, for the purposes of § 120.847 and § 120.848, the following rates, as determined by SBA:

- (A) Currency rate;
- (B) Delinquency rate;
- (C) Default rate;
- (D) Liquidation rate; and
- (E) Loss rate.

(2) *General.* PCLP CDCs must establish and maintain a LLRF (in one or multiple accounts) which complies with this section. A PCLP CDC must use the LLRF or other funds to cover its Exposure (as defined in paragraph (b) of this section) relating to any loss sustained by SBA as a result of a default in the payment of principal or interest on a Debenture it issued under the PCLP ("PCLP Debenture"). 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 reimbursement 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; provided, however, that a PCLP CDC's Exposure is 15 percent for any PCLP Debenture issued during a PCLP CDC's participation in Pilot 2. If Pilot 1 and Pilot 2 terminate or otherwise cease to apply to a PCLP CDC, then, for each PCLP Debenture a PCLP CDC issues, it must follow the applicable transition procedures and timeframes to 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. If Pilot 2 terminates or ceases to apply to a PCLP CDC, but Pilot 1 applies, then the PCLP CDC must establish and maintain an LLRF equal to one percent of the outstanding principal balances of its PCLP Debentures. (During Pilot 2 participation, Pilot 2 participants would not be affected by the termination of Pilot 1.) A PCLP CDC may not participate in Pilot 1 and Pilot 2 at the same 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 depository institution. The control agreement must include provisions requiring the depository 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)(1) *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:

(i) At least 50 percent of the required deposits to the LLRF on or about the date that it issues the PCLP Debenture.

(ii) At least an additional 25 percent of the required deposits to the LLRF no later than one year after it issues the PCLP Debenture.

(iii) Any remainder of the required deposits to the LLRF no later than two years after it issues the PCLP Debenture.

(2) This paragraph (e) does not apply to a PCLP CDC while it is participating in Pilot 2 or following the LLRF transition procedures applicable to a PCLP CDC after participating in Pilot 2.

(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. (For Pilot 2 participants, the applicable amount will be the amount set forth in the last Pilot 2 LLRF Certification submitted by the participant to SBA in accordance with Pilot 2 requirements.)

(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 its LLRF if such funds exceed the required minimums set forth in paragraph (b) of this section. In addition, prior to the expiration of Pilot 1, a Pilot 1 participant may withdraw amounts from its LLRF as permitted under Pilot 1. 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. A Pilot 2 participant may make withdrawals from its LLRF in accordance with Pilot 2 rules.

(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 an amount equal to its Exposure 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 the amount of the PCLP CDC's Exposure 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 AA/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 AA/FA's final decision as to the disputed amount of the loss, the PCLP CDC must promptly reimburse SBA the amount of the PCLP CDC's Exposure.

(i) *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 of its reimbursement obligation, then 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. If the PCLP CDC has filed such an appeal, SBA may cause such a transfer of funds to SBA 30 days after, and in accordance with, the AA/FA's or his or her delegate's decision. If the LLRF does not contain sufficient funds to reimburse SBA for any unpaid Exposure with respect to any PCLP Debenture, the PCLP CDC must pay SBA the difference within 30 days after demand for payment by SBA.

(j) *Insufficient funding of LLRF.* A PCLP CDC must diligently monitor the LLRF to ensure that it contains sufficient funds to cover its Exposure for its entire portfolio of PCLP Debentures. If, at any time, the LLRF does not contain sufficient funds, the PCLP CDC must, within 30 days of the earlier of the date it becomes aware of this deficiency or the date it receives notification from SBA of this deficiency, make additional contributions to the LLRF to make up this difference. For Pilot 2 deficiencies, notification will be made by the Bureau of PCLP Oversight. The Bureau will so notify Pilot 2 participants if it determines that:

(1) The Pilot 2 Independent Auditor failed to calculate the portfolio risk and reserve amount using ALLL Methodologies and Documentation in accord with GAAP, AICPA, SBA Office of Lender Oversight, and FFIEC guidance/standards; and

(2) The LLRF is insufficient to protect the Federal Government from loss due to inadequate LLRF. The notification will state the LLRF amount that SBA has determined to be sufficient to protect the Federal Government from loss due to inadequate LLRF.

**§ 120.848 [Redesignated]**

3. Redesignate § 120.848 as § 120.849.

4. Add a new § 120.848 to read as follows:

**§ 120.848 Pilot 2.**

(a) *General.* A PCLP CDC participating in Pilot 2 must establish and maintain a LLRF (in one or multiple accounts) which complies with this section and the sections of § 120.847 not otherwise expressly noted as inapplicable to Pilot 2 participants. Pilot 2 participants must reimburse the SBA for 10 percent of any loss sustained by SBA as a result of a default in payment of principal or interest on a PCLP Debenture; provided however, such participant must reimburse SBA for 15 percent of any such loss if the PCLP Debenture was issued during the PCLP CDC's

participation in Pilot 2. Notwithstanding any of the provisions of this section, a PCLP CDC may not participate in Pilot 2 after Pilot 2 terminates.

(b) *Eligibility.* A PCLP CDC is eligible to participate in Pilot 2 if SBA determines that the PCLP CDC:

(1) Has a LLRF containing at least \$100,000;

(2) Has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its outstanding PCLP Debentures (and the underlying PCLP loans) with ALLL Methodologies and Documentation in accord with AICPA guidelines, GAAP, SBA's Office of Lender Oversight guidance, and the FFIEC's Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions dated July 2, 2001, as published in 66 FR 35629, July 6, 2001;

(3) Has retained an independent auditor that meets the requirements set forth in paragraph (c) of this section; and

(4) Has met or exceeded 4 or more of the Specified Risk Management Benchmarks as of the most recent assessment by SBA or SBA has issued a waiver for good cause with respect to the requirement of this clause.

(c) *Independent auditor requirements.* In order to be eligible to participate in Pilot 2, the Bureau of PCLP Oversight must determine based on the documentation provided that the auditor:

(1) Is compensated by the PCLP CDC;

(2) Is an independent public

accountant who:

(i) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the PCLP CDC's principal office is located,

(ii) Agrees in an engagement letter with the PCLP CDC to provide SBA with access to and copies of any work papers, policies, and procedures relating to the services performed,

(iii) Is in compliance with the AICPA Code of Professional Conduct,

(iv) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff, and

(v) Has received, or is enrolled in, a peer review program that meets AICPA industry guidelines and standards;

(3) Has substantial experience calculating portfolio risk and reserve amounts using ALLL Methodologies and Documentation in accord with AICPA

and FFIEC guidance and standards and GAAP;

(4) Has experience evaluating portfolios comparable to PCLP 504 Debenture Portfolios; and

(5) Is otherwise acceptable to SBA. (A Pilot 2 participant which changes auditors during a Pilot 2 Calendar Quarter must provide the reasons for the change to the AA/OLO within 30 days of the change.)

(d) *Pilot 2 election procedures.* A PCLP CDC may elect to participate in Pilot 2 by notifying the AA/FA and AA/OLO in writing; such notification, which must be received by SBA no less than 10 days and no more than 45 days prior to any Pilot 2 participation period for which an election is made, must include:

(1) Clear and complete documentation that the PCLP CDC meets the requirements set forth in paragraph (b) of this section;

(2) Clear and complete documentation that the PCLP CDC's auditor meets the requirements set forth in paragraph (c) of this section; and

(3) A Pilot 2 LLRF Certification.

(e)(1) *Pilot 2 participation periods.* Following receipt of written confirmation from SBA by the PCLP CDC that it provided the documentation required in paragraph (d) of this section, the PCLP CDC's Pilot 2 participation period will be the next full calendar quarter and any following calendar quarter for which a timely election has been made in accordance with paragraph (d) of this section. For purposes of this section, full calendar quarters shall mean:

(i) The period which begins on January 1 and ends on March 31 of each year;

(ii) The period which begins on April 1 and ends on June 30 of each year;

(iii) The period which begins on July 1 and ends on September 30 of each year; and

(iv) The period which begins on October 1 and ends on December 31 of each year.

(2) Under no circumstances may a PCLP CDC participate in Pilot 2 after it has been statutorily terminated.

(f) (1) *Pilot 2 LLRF contribution requirements.* A Pilot 2 participant must maintain a LLRF in an amount sufficient to cover its Exposure as determined by its Pilot 2 Independent Auditor in accordance with this section and as set forth in the most recent Pilot 2 LLRF Certification; provided, however, that under no circumstances can the LLRF contain less than \$100,000.

(2) *Pilot 2 LLRF certifications.* Pilot 2 LLRF Certifications may be made in accordance with Pilot 2 election



procedures set forth in paragraph (d) of this section; a Pilot 2 participant must increase the amount of its LLRF, and may reduce the amount of its LLRF, as appropriate in order to adjust its LLRF to accord with the most recent Pilot 2 LLRF Certification.

(g) *Recontribution requirements after Pilot 2 participation.* When a PCLP CDC does not participate in Pilot 2 in a calendar quarter following Pilot 2 participation, it must adjust the amount of its LLRF to equal 1 percent of the sum of outstanding balances of its PCLP Debentures either within 45 days after its Pilot 2 participation or in accordance with a recontribution schedule submitted by the PCLP CDC and approved by SBA. A recontribution schedule must be submitted to SBA in writing within 30 days after the end of a PCLP CDC's Pilot 2 participation and contain documentation necessary to show that the schedule would sufficiently cover its Exposure. SBA may disapprove of a recontribution schedule if, in SBA's judgment, the schedule would not cover the PCLP CDC's Exposure. In that event, SBA will revise the recontribution schedule as SBA determines is necessary to cover the PCLP CDC's Exposure (SBA-determined recontribution schedule). SBA may also require the PCLP CDC to follow an SBA-determined recontribution schedule if the PCLP CDC does not submit one within the 30-day time frame. An SBA-determined recontribution schedule will be a final agency determination.

(h) *Failure by participant to meet Pilot 2 requirements.* SBA shall have the authority to remove a Pilot 2 participant from Pilot 2 if the participant fails to meet one or more Pilot 2 requirements stated in § 120.848. In that event, SBA may, among other corrective actions it deems necessary to cause the PCLP CDC's LLRF to cover the PCLP CDC's Exposure adequately, direct a Pilot 2 participant to follow an SBA-determined recontribution schedule for its LLRF.

(1) *Bureau of PCLP Oversight.* (i) *Establishment.* There is hereby established in the Small Business Administration a bureau to be known as the Bureau of PCLP Oversight to carry out such functions as the Administrator may from time to time designate or delegate to the Bureau of PCLP Oversight (including those described in paragraph (h)(1)(ii) of this section).

(ii) Pilot 2. The Bureau may review the Pilot 2 participant's process for analyzing the risk of loss associated with its portfolio of PCLP loans or for grading each PCLP loan made by the pilot 2 participant and make a

determination as to whether the process is consistent with ALLL Methodologies and Documentation and in accord with GAAP, AICPA, SBA Office of Lender Oversight and FFIEC guidance/standards. A negative determination may result in SBA finding the Pilot 2 participant ineligible to participate in Pilot 2 under § 120.848(b). It may also serve as a basis for program removal under § 120.848(h).

(2) [Reserved].

Dated: February 3, 2006.

**Hector V. Barreto,**  
*Administrator.*

[FR Doc. E6-8039 Filed 5-25-06; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NM-12-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 737-300, -400, -500, -600, -700, -700C, -800, and -900, and 747-400 Series Airplanes; and Model 757, 767, and 777 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737-300, -400, -500, -600, -700, -700C, -800, and -900, and 747-400 series airplanes; and Model 757, 767, and 777 airplanes. The original NPRM would have required modifying the static inverter by relocating resistor R170 of the static inverter bridge assembly. This new action revises the original NPRM by adding a new requirement for modifying the static inverter by replacing resistor R170 with a new resistor and relocating the new resistor. The actions proposed by this supplemental NPRM are intended to prevent a standby static inverter from overheating, which could result in smoke in the flight deck and cabin and loss of the electrical standby power system. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by June 20, 2006.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-12-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: [9-anm-nprmcomment@faa.gov](mailto:9-anm-nprmcomment@faa.gov). Comments sent via fax or the Internet must contain "Docket No. 2002-NM-12-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

#### **FOR FURTHER INFORMATION CONTACT:**

Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6485; fax (425) 917-6590.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before