

**B. MANAGEMENT OF GUARANTEED LOAN LENDERS AND SERVICERS****REFERENCES:**

Guidance	Treasury/FMS "Managing Federal Receivables"
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**1. Lender Eligibility.**

- a. *Participation Criteria.* Federal credit granting agencies shall establish and publish in the Federal Register specific eligibility criteria for lender participation in Federally guaranteed loan programs. These criteria should include:
- (1) Requirements that the lender is not currently debarred/suspended from participation in a Government contract or delinquent on a Government debt;
  - ~~(2) Qualification requirements for principal officers and staff of the lender;~~
  - (3) Fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as a loss payee, where appropriate, for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs;
  - (4) Financial and capital requirements for lenders not regulated by a Federal financial institution regulatory agency, including minimum net worth requirements based on business volume.
- b. *Review of Eligibility.* Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations (see B.3) or other required reviews, such as renewal of a lender agreement (see B.2). Lenders not meeting standards for continued participation should be decertified. In addition to the participation criteria above, guarantor agencies should consider lender performance as a critical factor in determining continued eligibility for participation.
- c. *Fees.* When authorized and appropriated for such purposes, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender eligibility.
- d. *Decertification.* Guarantor agencies should establish specific procedures to decertify lenders or take other appropriate action any time there is:
- (1) Significant and/or continuing non-conformance with agency standards; and/or
  - (2) Failure to meet financial and capital requirements or other eligibility criteria.
- Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of eligibility for Federal guaranteed loan programs.
- e. *Loan Servicers.* Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable standards set by the Federal guarantor agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

**2. Lender Agreements.** Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. These agreements should incorporate general participation requirements, performance standards and other applicable requirements of this Circular. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender eligibility for continued participation in the program.

a. *General Participation Requirements.*

- (1) Requirements for lender eligibility, including participation criteria, eligibility reviews, fees, and decertification (see *Section 1*, above);
- (2) Agency and lender responsibilities for sharing the risk of loan defaults (see *Section II.3. a.(1)*); and, where feasible

(3) Maximum delinquency, default and claims rates for lenders, taking into account individual program characteristics.

- b. *Performance Standards.* Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures and litigation to enforce loan contracts.

Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claim payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

- c. *Reporting Requirements.* Federal credit granting agencies should require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance and satisfy OMB, Treasury, and other reporting requirements which include the <Treasury Report on Receivables (TROR)>. Examples of these data which agencies must maintain include:

(1) *Activity Indicators* -- number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of risk; number and amount of guaranteed loans made during the reporting period; and number and amount of guaranteed loans terminated during the period.

(2) *Status Indicators* -- a schedule showing the number and amount of past due loans by "age" of the delinquency, and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should require lenders to report necessary information on a quarterly basis (or other reporting period based on the level of lending and payment activity).

- d. *Loan Servicers.* Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.

# OMB Circular A-123, Management's Responsibility for Internal Control

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### **I. INTRODUCTION**

Management has a fundamental responsibility to develop and maintain effective internal control. The proper stewardship of Federal resources is an essential responsibility of agency managers and staff. Federal employees must ensure that Federal programs operate and Federal resources are used efficiently and effectively to achieve desired objectives. Programs must operate and resources must be used consistent with agency missions, in compliance with laws and regulations, and with minimal potential for waste, fraud, and mismanagement.

Management is responsible for developing and maintaining effective internal control. Effective internal control provides assurance that significant weaknesses in the design or operation of internal control, that could adversely affect the agency's ability to meet its objectives, would be prevented or detected in a timely manner.

Internal Control -- organization, policies, and procedures -- are tools to help program and financial managers achieve results and safeguard the integrity of their programs. This Circular provides guidance on using the range of tools at the disposal of agency managers to achieve desired program results and meet the requirements of the Federal Managers' Financial Integrity Act (FMFIA) of 1982. The FMFIA encompasses accounting and administrative controls. Such controls include program, operational, and administrative areas as well as accounting and financial management.

The importance of internal control is addressed in many statutes and executive documents. The FMFIA establishes overall requirements with regard to internal control. The agency head must establish controls that reasonably ensure that: "(i) obligations and costs are in compliance with applicable law; (ii) funds, property, and other assets are safeguarded against waste, loss, unauthorized use or misappropriation; and (iii) revenues

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and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets.”<sup>1</sup> In addition, the agency head annually must evaluate and report on the control and financial systems that protect the integrity of Federal programs (Section 2 and Section 4 of FMFIA respectively). The three objectives of internal control are to ensure the effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. The safeguarding of assets is a subset of all of these objectives.

Instead of considering internal control as an isolated management tool, agencies should integrate their efforts to meet the requirements of the FMFIA with other efforts to improve effectiveness and accountability. Thus, internal control should be an integral part of the entire cycle of planning, budgeting, management, accounting, and auditing. It should support the effectiveness and the integrity of every step of the process and provide continual feedback to management.

Federal managers must carefully consider the appropriate balance between controls and risk in their programs and operations. Too many controls can result in inefficient and ineffective government; agency managers must ensure an appropriate balance between the strength of controls and the relative risk associated with particular programs and operations. The benefits of controls should outweigh the cost. Agencies should consider both qualitative and quantitative factors when analyzing costs against benefits.

**A. Agency Implementation.** Internal control guarantees neither the success of agency programs, nor the absence of waste, fraud, and mismanagement, but is a means of managing the risk associated with Federal programs and operations. Managers should define the control environment (e.g., programs, operations, or financial reporting) and then perform risk assessments to identify the most significant areas within that environment in which to place or enhance internal control. The risk assessment is a critical step in the process to determine the extent of controls. Once significant areas have been identified, control activities should be implemented. Continuous monitoring and testing should help to identify poorly designed or ineffective controls and should be reported upon periodically. Management is then responsible for redesigning or improving upon those controls. Management is also responsible for communicating the objectives of internal control and ensuring the organization is committed to sustaining an effective internal control environment.

Appropriate internal control should be integrated into each system established by agency management to direct and guide its operations. As stated earlier in this document, internal control applies to program, operational, and administrative areas as well as accounting and financial management.

Generally, identifying and implementing the specific procedures necessary to ensure effective internal control, and determining how to assess the effectiveness of those controls, is left to the discretion of the agency head. While the procedures may vary from

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<sup>1</sup> The quoted text is from the Federal Managers' Financial Integrity Act (FMFIA) of 1982.

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agency to agency, management should have a clear, organized strategy with well-defined documentation processes that contain an audit trail, verifiable results, and specify document retention periods so that someone not connected with the procedures can understand the assessment process.

To ensure senior management involvement, many agencies have established their own senior management council, often chaired by the agency's lead management official, to address management accountability and related issues within the broader context of agency operations. Relevant issues for such a council include ensuring the agency's commitment to an appropriate system of internal control; actively overseeing the process of assessing internal controls, including non-financial as well as financial reporting objectives; recommending to the agency head which control deficiencies are material to disclose in the annual FMFIA report; and providing input for the level and priority of resource needs to correct these deficiencies. (See also Section IV.C. Role of a Senior Management Council.)

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## II. STANDARDS

*Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.<sup>2</sup>*

Internal control, in the broadest sense, includes the plan of organization, methods and procedures adopted by management to meet its goals. Internal control includes processes for planning, organizing, directing, controlling, and reporting on agency operations.

The three objectives of internal control are:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

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<sup>2</sup> Internal control standards and the definition of internal control are based on GAO, Standards for Internal Control in the Federal Government, November 1999, "Green Book".

SYSTEM NAME:

Investigative Files--SBA 16.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Investigations Division and Federal Records Center (FRC). See Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDE:

Persons against whom are made allegations that are within the jurisdiction of the OIG to investigate; persons identified as making such allegations; or persons cross-referenced in investigative file or subsequent investigations. Applicants to, and participants in SBA programs, their principals, representatives and resource partners; contractors and parties to cooperative agreements and their principals, representatives, and other interested parties; governmental entities; SBA employees, members of the Advisory Councils, Service Corps of Retired Executive volunteers in connection with allegations of wrongdoing that are within the jurisdiction of the OIG to investigate.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDE:

Material provide to, gathered or created by OIG in investigating, or otherwise dealing with allegations that are within the jurisdiction of the OIG to investigate, documentation of allegations, consultations, decisions, interviews, records reviews, reports of investigations, and various correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3 (The Inspector General Act of 1978), 15 U.S.C. Chapters 14A and 14B and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

- a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.
- b. To a grand jury, court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.
- c. To other Federal agencies conducting background checks; only to the extent the information is relevant to the requesting agencies' function.
- d. To any Federal, State, local, foreign or international agency, in connection with such entity's assignment, hiring and retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.
- e. To a domestic, foreign, or international government agency maintaining civil, criminal, relevant enforcement or other pertinent information, for the assignment hiring or retention of an individual,

the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

f. To Federal, State or local bar associations and other professional regulatory or disciplinary bodies for use in disciplinary proceedings and inquiries.

g. To a Congressional office from an individual's record, when the office is inquiring on the individual's behalf; the Member's access rights are no greater than the individual's.

h. To the General Accounting Office (GAO) for periodic reviews of SBA.

i. To the Office of Government Ethics for any purpose consistent with their mission.

j. To the GAO, and to the General Services Administration's Board of Contract Appeals in bid protest cases involving an agency procurement.

k. To any Federal agency which has the authority to subpoena other Federal agencies records and has issued a valid subpoena.

l. To the Department of Treasury and the Department of Justice (DOJ) when an agency is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

m. To debt collection contractors for collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

n. To a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681 a (f) and the Federal Claims Collection Act of 1966 (31 U.S.C. 701(a)(3)), to obtain information during an investigation or audit.

o. To agency personnel responsible for Program Civil Remedies Act litigation, the tribunal and defendant's counsel.

p. To a grand jury agent pursuant either to a Federal or State grand jury subpoena or to a prosecution request that records be introduced to a grand jury.

q. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

r. To the DOJ when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

- (1) The agency, or any component thereof;
- (2) Any employee of the agency in his or her official capacity;
- (3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or
- (4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

s. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or

other adjudicative body is a use of the information contained in the records that is incompatible with the purpose for which the records were collected:

- (1) The agency, or any component thereof;
- (2) Any employee of the agency in his or her official capacity;
- (3) Any employee of the agency in his or her individual capacity here the DOJ has agreed to represent the employee; or
- (4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

File folders in filing cabinets and safes, and electronic files.

RETRIEVAL:

Indexed by name of the investigated individual and cross-referenced to the number(s) of the investigative file(s) containing related materials.

SAFEGUARDS:

All filing cabinets are locked. Access to and use limited to those persons with official need to know; computers are protected by password and user identification codes.

RETENTION AND DISPOSAL:

In accordance with Standard Operating Procedure 00 41 2 Item Nos. 90:10 and 90:12. Cut off at the end of the calendar year. Transfer to FRC 6 years after cutoff. Destroy 15 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations or designee. See Appendix A.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry in writing or in person to the Systems Manager or PA Officer.

ACCESS PROCEDURES:

Systems Manager or PA Officer will determine procedures.

CONTESTING PROCEDURES:

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

SOURCE CATEGORIES:

Subject individual, Agency personnel, informants, the Federal Bureau of Investigation and other investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

- (1) Pursuant to 5 U.S.C. 552a(j)(2), records in this system of records are exempt from the application of all provisions of section 552a except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11), and (i), to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of



identifying data and notations of arrests, confinement, release, and parole and probation status;

(B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the Office of the Inspector General's criminal law enforcement function.

(2) Pursuant to 5 U.S.C. 552(a)(k)(2) and (k)(5), all investigatory material in the record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access, and contest requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order to fulfill commitments made to protect the confidentiality of sources and to protect subjects of investigations from frustrating the investigatory process.

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SBA 17

SYSTEM NAME:

Investigations Division Management Information System--SBA 17.

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SYSTEM LOCATION:

Office of the Inspector General (OIG), Investigations Division. See Appendix A.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM INCLUDES:

Persons against whom are made allegations that are within the OIG's jurisdiction to investigate, persons identified as making allegations or persons who are cross-referenced to an investigative file, principals, representatives of applicants, participants, contractors, grantees, participants in cooperative agreements, resource partners and their principals and representatives and other interested parties participating in SBA programs, and members of Advisory Councils and SCORE/ACE volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM INCLUDES:

Material gathered or created during preparation for, conduct of and follow-up on investigations conducted by OIG, the FBI and other Federal, State, local, or foreign regulatory or law enforcement agency. May include alphabetical indices of names and case numbers and information about allegations, decisions, investigative assignments and special techniques, and reports and results of investigations and time spent by investigators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3 (The Inspector General Act of 1978), 15 U.S.C. Chapters 14A and 14B; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To the Federal, State, local or foreign agency or professional organization which investigates, prosecutes or enforces violations, statutes, rules, regulations or orders issued when the Agency identifies a violation or potential violation of law whether arising by general or program statute, or by regulation, rule or order.

b. To a court, magistrate, grand jury or administrative tribunal, opposing counsel during such proceedings or in

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settlement negotiations when presenting evidence.

c. To the General Accounting Office for periodic reviews of the SBA.

d. To the Office of Government Ethics for any purpose consistent with their mission.

e. To Agency volunteers, interns, grantees, experts and contractors who have been engaged by the Agency to assist in the performance of a service related to this system of records and who need access to the records in order to perform this activity. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

f. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

g. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS:

STORAGE:

Self-contained system and computer disks.

RETRIEVAL:

Subjects' name, company name, case number, agent's name, Social

Security Number or agent's identification number.

**SAFEGUARDS:**

Access to and use of these records is limited to those persons whose official duties require such access; computers are protected by password and user identification codes.

**RETENTION AND DISPOSAL:**

In accordance with Standard Operating Procedure 00 41 2 Items 90:10 and 90:12. Retained on computer disks indefinitely. Hard copies are made monthly, retained for five years before being destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Inspector General for Investigations or designee. See Appendix A.

**NOTIFICATION PROCEDURES:**

An individual may submit a record inquiry either in person or in writing to the Systems Manager or PA Officer.

**ACCESS PROCEDURES:**

Systems Manager or PA Officer will determine procedures.

**CONTESTING PROCEDURES:**

Notify the official listed above and state reason(s) for contesting and the proposed amendment sought.

**SOURCE CATEGORIES:**

Subject individual, Agency personnel, informants, the Federal Bureau of Investigation and other investigative Government agencies.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 552(a)(k)(2) and (k)(5), all investigatory material in the record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order to fulfill commitments made to protect the confidentiality of sources and to protect subjects of investigations from frustrating the investigatory process.

SBA 18

PUBLIC LAW 97-255 [H.R. 1526]; September 8, 1982

Federal Managers Financial Integrity Act (FMFIA) of  
1982

Be it enacted by the Senate and House of Representatives of the United States of America  
in Congress Assembled,

Section 1. This Act may be cited as the "Federal Managers' Financial Integrity Act of 1982".

Sec. 2. Section 113 of the Accounting and Auditing Act of 1950 (31 U.S.C. 66a) is amended  
by adding at the end thereof the following new subsection:

"(d)(1)(A) To ensure compliance with the requirements of subsection (a)(3) of this section,  
internal accounting and administrative controls of each executive agency shall be established in  
accordance with standards prescribed by the Comptroller General, and shall provide reasonable  
assurances that --

"(i) obligations and costs are in compliance with applicable law;

"(ii) funds, property, and other assets are safeguarded against waste, loss, unauthorized  
use, or misappropriation; and

"(iii) revenues and expenditures applicable to agency operations are properly recorded  
and accounted for to permit the preparation of accounts and reliable financial and statistical  
reports and to maintain accountability over the assets.

"(B) The standards prescribed by the Comptroller General under this paragraph shall include  
standards to ensure the prompt resolution of all audit findings.

"(2) By December 31, 1982, the Director of the Office of Management and Budget, in  
consultation with the Comptroller General, shall establish guidelines for the evaluation by agencies  
of their systems of internal accounting and administrative control to determine such systems'  
compliance with the requirements of paragraph (1) of this subsection. The Director, in consultation  
with the Comptroller General, may modify such guidelines from time to time as deemed necessary.

"(3) By December 31, 1983, and by December 31 of each succeeding year, the head of each  
executive agency shall, on basis of an evaluation conducted in accordance with guidelines  
prescribed under paragraph (2) of this subsection, prepare a statement --

"(A) that the agency's systems of internal accounting and administrative control fully  
comply with the requirements of paragraph (1); or

"(B) that the systems do not fully comply with such requirements.

"(4) In the event that the head of an agency prepares a statement described in paragraph (3)(B),  
the head of such agency shall include with such statement a report in which any material  
weaknesses in the agency's systems of internal accounting and administrative control are identified  
and the plans and schedule for correcting any such weakness are described.

"(5) The statements and reports required by this subsection shall be signed by the head of each  
executive agency and transmitted to the President and the Congress. Such statements and reports  
shall also be made available to the public, except that, in the case of any such statement or report  
containing information which is --

"(A) specifically prohibited from disclosure by any provision of law; or

"(B) specifically required by Executive order to be kept secret in the interest of national  
defense or the conduct of foreign affairs,

such information shall be deleted prior to the report or statement being made available to the  
public.

Sec. 3. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by adding at the end thereof the following new subsection:

"(k)(1) The President shall include in the supporting detail accompanying each Budget submitted on or after January 1, 1983, a separate statement, with respect to each department and establishment, of the amounts of appropriations requested by the President for the Office of Inspector General, if any, of each such establishment or department.

"(2) At the request of a committee of the Congress, additional information concerning the amount of appropriations originally requested by any office of the Inspector General, shall be submitted to such committee."

Sec. 4. Section 113(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 66a(b)), is amended by adding at the end thereof the following new sentence: "Each annual statement prepared pursuant to subsection (d) of this section shall include a separate report on whether the agency's accounting system conforms to the principles, standards, and related requirements prescribed by the Comptroller General under section 112 of this Act."

Approved September 8, 1982.

LEGISLATIVE HISTORY - H.R. 1526 (S. 864)

HOUSE REPORT No. 97-38 (Comm. on Government Operations).

CONGRESSIONAL RECORD:

Vol. 127 (1981): May 18, considered and passed House.

Vol. 128 (1982): Aug 4, considered and passed Senate, amended.

Aug. 19, House concurred in Senate amendment.

House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and government corporations.”;

(B) by adding after subsection (c) the following new subsection:

“(d) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.”.

(i)(1) IN GENERAL.—Section 7701 of title 31, United States Code, is amended by adding at the end the following new subsections:

\*“(c)(1) The head of each Federal agency shall require each person doing business with that agency to furnish to that agency such person’s taxpayer identifying number.

“(2) For purposes of this subsection, a person shall be considered to be doing business with a Federal agency if the person is—

“(A) a lender or servicer in a Federal guaranteed or insured loan program administered by the agency;

“(B) an applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency;

“(C) a contractor of the agency;

“(D) assessed a fine, fee, royalty or penalty by the agency;

and

“(E) in a relationship with the agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a Federal direct or insured loan administered by the agency.

“(3) Each agency shall disclose to a person required to furnish a taxpayer identifying number under this subsection its intent to use such number for purposes of collecting and reporting on any delinquent amounts arising out of such person’s relationship with the Government.

“(4) For purposes of this subsection, a person shall not be treated as doing business with a Federal agency solely by reason of being a debtor under third party claims of the United States. The preceding sentence shall not apply to a debtor owing claims resulting from petroleum pricing violations or owing claims resulting from Federal loan or loan guarantee/insurance programs.

“(d) Notwithstanding section 552a(b) of title 5, United States Code, creditor agencies to which a delinquent claim is owed, and their agents, may match their debtor records with Department of Health and Human Services, and Department of Labor records to obtain names (including names of employees), name controls, names of employers, taxpayer identifying numbers, addresses (including addresses of employers), and dates of birth. The preceding sentence shall apply to the disclosure of taxpayer identifying numbers only if such disclosure is not otherwise prohibited by section 6103 of the Internal Revenue Code of 1986. The Department of Health and Human Services, and the Department of Labor shall release that information to creditor agencies and may charge reasonable fees sufficient to pay the costs associated with that release.”.

(2) INCLUDED FEDERAL LOAN PROGRAM DEFINED.—Subparagraph (C) of section 6103(l)(3) of the Internal Revenue Code of 1986 (relating to disclosure that applicant for Federal loan has tax delinquent account) is amended to read as follows:

## § 120.1

### ENFORCEABILITY OF 501, 502 AND 503 LOANS AND OTHER LAWS

120.990 501, 502 and 503 loans.

120.991 Effect of other laws.

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

SOURCE: 61 FR 3235, Jan. 31, 1996, unless otherwise noted.

### GENERAL DESCRIPTIONS OF SBA'S BUSINESS LOAN PROGRAMS

#### § 120.1 Which loan programs does this part cover?

This part regulates SBA's financial assistance to small businesses under its general business loan programs ("7(a) loans") authorized by section 7(a) of the Small Business Act ("the Act"), 15 U.S.C. 636(a), its microloan demonstration loan program ("Microloans") authorized by section 7(m) of the Act, 15 U.S.C. 636(m), and its development company program ("504 loans") authorized by Title V of the Small Business Investment Act, 15 U.S.C. 695 to 697f ("Title V"). These three programs constitute the business loan programs of the SBA.

#### § 120.2 Descriptions of the business loan programs.

(a) *7(a) loans.* (1) 7(a) loans provide financing for general business purposes and may be:

- (i) A direct loan by SBA;
- (ii) An immediate participation loan by a Lender and SBA; or
- (iii) A guaranteed loan (deferred participation) by which SBA guarantees a portion of a loan made by a Lender.

(2) A guaranteed loan is initiated by a Lender agreeing to make an SBA guaranteed loan to a small business and applying to SBA for SBA's guarantee under a blanket guarantee agreement (participation agreement) between SBA and the Lender. If SBA agrees to guarantee (authorizes) a portion of the loan, the Lender funds and services the loan. If the small business defaults on the loan, SBA's guarantee requires SBA to purchase its portion of the outstanding balance, upon demand by the Lender and subject to specific conditions. Regulations specific to 7(a) loans are found in subpart B of this part.

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(b) *Microloans.* SBA makes loans and loan guarantees to non-profit Intermediaries that make short-term loans up to \$25,000 to eligible small businesses for general business purposes, except payment of personal debts. SBA also makes grants to Intermediaries for use in providing management assistance and counseling to small businesses. Regulations specific to these loans are found in subpart G of this part.

(c) *504 loans.* Projects involving 504 loans require long-term fixed-asset financing for small businesses. A Certified Development Company (CDC) provides the final portion of this financing with a 504 loan made from the proceeds of a Debenture issued by the CDC, guaranteed 100 percent by SBA (with the full faith and credit of the United States), and sold to investors. The regulations specific to these loans are found in subpart H of this part.

#### § 120.3 Pilot programs.

The Administrator of SBA may from time to time suspend, modify, or waive rules for a limited period of time to test new programs or ideas. The Administrator shall publish a document in the FEDERAL REGISTER explaining the reasons for these actions.

### \* DEFINITIONS

#### § 120.10 Definitions.

The following terms have the same meaning wherever they are used in this part. Defined terms are capitalized wherever they appear.

*Associate.* (1) An Associate of a Lender or CDC is:

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the Lender's or CDC's stock or debt instruments, or an agent involved in the loan process;

(ii) Any entity in which one or more individuals referred to in paragraphs (1)(i) of this definition or a Close Relative of any such individual owns or controls at least 20 percent.

(2) An Associate of a small business is:

(i) An officer, director, owner of more than 20 percent of the equity, or key employee of the small business;

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(ii) Any entity in which one or more individuals referred to in paragraphs 2)(i) of this definition owns or controls at least 20 percent; and

(iii) Any individual or entity in control of or controlled by the small business (except a Small Business Investment Company ("SBIC") licensed by SBA).

(3) For purposes of this definition, the time during which an Associate relationship exists commences six months before the following dates and continues as long as the certification, participation agreement, or loan is outstanding:

(i) For a CDC, the date of certification by SBA;

(ii) For a Lender, the date of application for a loan guarantee on behalf of an applicant; or

(iii) For a small business, the date of the loan application to SBA, the CDC, the Intermediary, or the Lender.

*Authorization* is SBA's written agreement providing the terms and conditions under which SBA will make or guarantee business loans. It is not a contract to make a loan.

*Borrower* is the obligor of an SBA business loan.

*Certified Development Company* ("CDC") is an entity authorized by SBA to deliver 504 financing to small businesses.

*Close Relative* is a spouse; a parent; or a child or sibling, or the spouse of any such person.

*Eligible Passive Company* is a small entity or trust which does not engage in regular and continuous business activity, which leases real or personal property to an Operating Company for use in the Operating Company's business, and which complies with the conditions set forth in § 120.111.

*Intermediary* is the entity in the Microloan program that receives SBA financial assistance and makes loans to small businesses in amounts up to \$25,000.

*Lender* is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

*Loan Instruments* are the Authorization, note, instruments of hypothecation, and all other agreements and documents related to a loan.

*Operating Company* is an eligible small business actively involved in conducting business operations now or about to be located on real property owned by an Eligible Passive Company, or using or about to use in its business operations personal property owned by an Eligible Passive Company.

*Preference* is any arrangement giving a Lender or a CDC a preferred position compared to SBA relating to the making, servicing, or liquidation of a business loan with respect to such things as repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a Certificate of deposit or acceptance of a separate or companion loan, without SBA's consent.

*Rentable Property* is the total square footage of all buildings or facilities used for business operations.

*Rural Area* is a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000 which is designated by SBA as rural.

*Service Provider* is an entity that contracts with a Lender or CDC to perform management, marketing, legal or other services.

*SOPs* are SBA Standard Operating Procedures, as issued and revised by SBA from time to time.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2117, Jan. 13, 1999; 68 FR 57980, Oct. 7, 2003]

### Subpart A—Policies Applying to All Business Loans

#### ELIGIBILITY REQUIREMENTS

#### § 120.100 What are the basic eligibility requirements for all applicants for SBA business loans?

To be eligible for an SBA business loan, a small business applicant must:

(a) Be an operating business (except for loans to Eligible Passive Companies);

(b) Be organized for profit;

(c) Be located in the United States;

(d) Be small under the size requirements of part 121 of this chapter (including affiliates). See subpart H of



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(a) Payments, distributions or loans to Associates of the applicant (except for ordinary compensation for services rendered);

(b) Refinancing a debt owed to a Small Business Investment Company ("SBIC");

(c) Floor plan financing or other revolving line credit, except under § 120.390;

(d) Investments in real or personal property acquired and held primarily for sale, lease, or investment (except for a loan to an Eligible Passive Company or to a small contractor under § 120.310);

(e) A purpose which does not benefit the small business; or

(f) Any use restricted by §§ 120.201 through 120.203 and 120.884 (specific to 7(a) loans and 504 loans respectively).

### § 120.131 Leasing part of new construction or existing building to another business.

(a) If the SBA financing (whether 7(a) or 504) is for the construction of a new building, a Borrower may permanently lease up to 20 percent of the Rentable Property to one or more tenants if the Borrower permanently occupies and uses no less than 60 percent of the Rentable Property, and plans to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and plans to permanently occupy and use within ten years all of the remaining space not permanently leased. If the Borrower is an Eligible Passive Company which leases 100 percent of the new building's space to one or more Operating Companies, the Operating Company, or Operating Companies together, must follow the same rules set forth in this paragraph.

(b) If the SBA financing (whether 7(a) or 504) is for the acquisition, renovation, or reconstruction of an existing building, the Borrower may permanently lease up to 49 percent of the Rentable Property if the Borrower permanently occupies and uses no less than 51 percent of the Rentable Property. If the Borrower is an Eligible Passive Company which leases 100 percent of the space of the existing building to one or more Operating Companies, the Operating Company, or Operating Com-

panies together, must follow the same rules set forth in this paragraph.

[68 FR 51679, Aug. 28, 2003]

### \* ETHICAL REQUIREMENTS

#### § 120.140 What ethical requirements apply to participants?

Lenders, Intermediaries, and CDCs (in this section, collectively referred to as "Participants"), must act ethically and exhibit good character. Ethical indiscretion of an Associate of a Participant or a member of a CDC will be attributed to the Participant. A Participant must promptly notify SBA if it obtains information concerning the unethical behavior of an Associate. The following are examples of such unethical behavior. A Participant may not:

(a) Self-deal;

(b) Have a real or apparent conflict of interest with a small business with which it is dealing (including any of its Associates or an Associate's Close Relatives) or SBA;

(c) Own an equity interest in a business that has received or is applying to receive SBA financing (during the term of the loan or within 6 months prior to the loan application);

(d) Be incarcerated, on parole, or on probation;

(e) Knowingly misrepresent or make a false statement to SBA;

(f) Engage in conduct reflecting a lack of business integrity or honesty;

(g) Be a convicted felon, or have an adverse final civil judgment (in a case involving fraud, breach of trust, or other conduct) that would cause the public to question the Participant's business integrity, taking into consideration such factors as the magnitude, repetition, harm caused, and remoteness in time of the activity or activities in question;

(h) Accept funding from any source that restricts, prioritizes, or conditions the types of small businesses that the Participant may assist under an SBA program or that imposes any conditions or requirements upon recipients of SBA assistance inconsistent with SBA's loan programs or regulations;

(i) Fail to disclose to SBA all relationships between the small business and its Associates (including Close Relatives of Associates), the Participant,

and/or the lenders financing the Project of which it is aware or should be aware;

(j) Fail to disclose to SBA whether the loan will:

(1) Reduce the exposure of a Participant or an Associate of a Participant in a position to sustain a loss;

(2) Directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Participant or an Associate of the Participant;

(3) Repay or refinance a debt due a Participant or an Associate of a Participant; or

(4) Require the small business, or an Associate (including Close Relatives of Associates), to invest in the Participant (except for institutions which require an investment from all members as a condition of membership, such as a Production Credit Association);

(k) Issue a real estate forward commitment to a builder or developer; or

(l) Engage in any activity which taints its objective judgment in evaluating the loan.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57980, Oct. 7, 2003]

CREDIT CRITERIA FOR SBA LOANS

§ 120.150 What are SBA's lending criteria?

The applicant (including an Operating Company) must be creditworthy. Loans must be so sound as to reasonably assure repayment. SBA will consider:

(a) Character, reputation, and credit history of the applicant (and the Operating Company, if applicable), its Associates, and guarantors;

(b) Experience and depth of management;

(c) Strength of the business;

(d) Past earnings, projected cash flow, and future prospects;

(e) Ability to repay the loan with earnings from the business;

(f) Sufficient invested equity to operate on a sound financial basis;

(g) Potential for long-term success;

(h) Nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and

(i) The effect any affiliates (as defined in part 121 of this chapter) may have on the ultimate repayment ability of the applicant.

§ 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in § 121.103 of this chapter, must not exceed a guaranty amount of \$1,000,000, except as otherwise authorized by statute for a specific program. The maximum loan amount for any one 7(a) loan is \$2,000,000. The amount of any loan received by an Eligible Passive Company applies to the loan limit of both the Eligible Passive Company and the Operating Company.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 51680, Aug. 28, 2003]

§ 120.160 Loan conditions.

The following requirements are normally required by SBA for all business loans:

(a) *Personal guarantees.* Holders of at least a 20 percent ownership interest generally must guarantee the loan. SBA, in its discretion, consulting with the Participating Lender, may require other appropriate individuals to guarantee the loan as well, except SBA will not require personal guarantees from those owning less than 5% ownership.

(b) *Appraisals.* SBA may require professional appraisals of the applicant's and principals' assets, a survey, or a feasibility study.

(c) *Hazard Insurance.* SBA requires hazard insurance on all collateral.

(d) *Taxes.* The applicant may not use any of the proceeds to pay past-due Federal and state payroll taxes.

REQUIREMENTS IMPOSED UNDER OTHER LAWS AND ORDERS

§ 120.170 Flood insurance.

Under the Flood Disaster Protection Act of 1973 (Sec. 205(b) of Pub. L. 93-234; 87 Stat. 983 (42 U.S.C. 4000 *et seq.*)), a loan recipient must obtain flood insurance if any building (including mobile

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SBA's rights to deny a specific loan or establish general policies. *See also* §§ 120.441(b) and 120.451(d) concerning Supplemental Guarantee Agreements.

✱ PARTICIPATION CRITERIA

§ 120.410 Requirements for all participating Lenders.

A Lender must:

(a) Have a continuing ability to evaluate, process, close, disburse, service and liquidate small business loans;

(b) Be open to the public for the making of such loans (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);

(c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements of § 120.140

(d) Be supervised and examined by a State or Federal regulatory authority, satisfactory to SBA; and

(e) In order to make Low Documentation loans, be:

(1) A bank or thrift institution which has executed an SBA Form 750, Loan Guaranty Agreement, and which has at least 20 qualified loans outstanding as of the call report date closest to the date of its fiscal year end, or

(2) An institution other than a bank or thrift institution which has executed an SBA Form 750, Loan Guaranty Agreement, and which has at least 20 qualified loans outstanding as of its latest fiscal year end. For purposes of this paragraph (e), a qualified loan is one which was initially approved in the amount of \$100,000 or less and is classified as a commercial, industrial or commercial real estate loan for purposes of call reporting. A lender may request an exception to the requirements of this paragraph (e) from the SBA Associate Administrator for Financial Assistance.

[61 FR 3235, Jan. 31, 1996, as amended at 62 FR 302, Jan. 3, 1997]

§ 120.411 Preferences.

An agreement to participate under the Act may not establish any Preferences in favor of the Lender.

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§ 120.412 Other services Lenders may provide Borrowers.

Subject to § 120.140 Lenders, their Associates or the designees of either may provide services to and contract for goods with a Borrower only after full disbursement of the loan to the small business or to an account not controlled by the Lender, its Associate, or the designee. A Lender, an Associate, or a designee providing such services must do so under a written contract with the small business, based on time and hourly charges, and must maintain time and billing records for examination by SBA. Fees cannot exceed those charged by established professional consultants providing similar services. *See also* § 120.195.

§ 120.413 Advertisement of relationship with SBA.

A Lender may refer in its advertising to its participation with SBA. The advertising may not:

- (a) State or imply that the Lender, or any of its Borrowers, has or will receive preferential treatment from SBA;
- (b) Be false or misleading; or
- (c) Make use of SBA's seal.

MISCELLANEOUS PROVISIONS

§ 120.414 SBA access to Lender files.

A Lender must allow SBA's authorized representatives, during normal business hours, access to its files to review, inspect and copy all records and documents relating to SBA guaranteed loans.

[61 FR 3235, Jan. 31, 1996. Redesignated at 64 FR 6509, Feb. 10, 1999]

§ 120.415 Suspension or revocation of eligibility to participate.

SBA may suspend or revoke the eligibility of a Lender to participate in the 7(a) program because of a violation of SBA regulations, a breach of any agreement with SBA, a change of circumstance resulting in the Lender's inability to meet operational requirements, or a failure to engage in prudent lending practices. Proceedings for such purposes will be conducted in accordance with the provisions of part 134

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## § 120.854

### 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]

### SBA OVERSIGHT

#### § 120.853 Oversight and evaluation of CDCs.

SBA may conduct an operational review of a CDC. 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]

### SBA ENFORCEMENT ACTIONS

#### § 120.854 Grounds for taking enforcement action against a CDC.

(a) *General.* The AA/FA or his or her authorized delegate may undertake one or more of the enforcement actions set forth in §§ 120.855(a) and (b) with respect to a CDC, based upon a determination that one or more of the following grounds exist:

(1) The CDC has failed to receive SBA approval for at least four 504 loans during two consecutive fiscal years;

(2) The CDC has failed to comply materially with any requirement imposed by statute, regulation, SOP, policy and procedural notice, any agreement the CDC has executed with SBA, or the terms of a Debenture or loan authorization.

(3) The CDC has made a material false statement or has failed to disclose a material fact to SBA:

(i) With respect to a 504 loan;

(ii) In applying to SBA for authority to participate in the 504 program or for any change in the CDC's participation in the 504 program; or

(iii) In any report or other disclosure of information that SBA requires.

(4) The CDC is not performing underwriting, closing, servicing, liquidation, litigation, or other actions with respect to 504 loans in a commercially reasonable or prudent manner. Supporting evidence of a CDC's commercially unreasonable or imprudent action may include, but is not limited to, failure to meet one or more of the portfolio benchmarks.