

**CDC Bylaws Requirements Crosswalk
FAQs on Eliminating Membership
Before and After Effective Date of Final Rule April 21, 2014**

Before Final Rule (effective until 4/21/14)	Final Rule Corporate Governance Rules Effective Date (After 4/21/15)
I. MEMBERSHIP – 13 CFR§120.822	I. MEMBERSHIP – 13 CFR§120.822 was eliminated.
II. BOARD OF DIRECTORS – 13 CFR§120.823	II. BOARD OF DIRECTORS – 13 CFR§120.823 - revised
1. The CDC must have a Board of Directors chosen from the Membership by the members, and representing at least three of the four Membership groups.	1. All CDCs must have a Board of Directors with at least nine (9) voting directors. A CDC may request and the approval of D/FA or designee to have a Board with fewer directors than 9 for good cause. Good cause may include geographic restrictions or location in an isolated area. The Board must be actively involved in encouraging economic development in the Area of Operations. Board Members must have background and experience in internal controls, financial risk management, commercial lending, legal issues relating to commercial lending, and corporate governance. The initial Board may be created by any method permitted by applicable state law.
2. No single group shall control.	2. No single group shall control. Directors from the commercial lending field must comprise less than 50% of the representation on the Board.
3. No person who is a member of a CDC's staff may be a voting member of the Board except for the CDC manager.	3. No change.
4. The Board Members must be responsible officials of the organizations they represent.	4. Directors may be either currently employed or retired. Retirees may represent the field from which they retired.

<p>Before Final Rule (effective until 4/21/14)</p>	<p>Final Rule Corporate Governance Rules Effective Date (After 4/21/15)</p>
<p>5. At least one member other than the CDC manager must possess commercial lending experience.</p>	<p>5. The Board must have at least two voting members, other than the CDC manager, who must possess commercial lending experience satisfactory to SBA.</p> <p>A CDC must have at least one voting Director that represents the economic, community or workforce development fields.</p>
<p>6. 120.830 of 13 CFR lists the entities with which a CDC may be affiliated, included:</p> <p>An entity (other than a 7(a) lender or another CDC) whose function is economic development in the same Area of Operations as the CDC and that is either a non-profit entity or a State or local government or political subdivision (e.g. council of governments) 13 CFR § 120.820(b)</p> <p>A for-profit entity (other than a 7(a) Lender) whose function is economic development in the same Area of Operations as the CDC with the prior written approval of D/FA or designee if he or she determines in his or her discretion that such approval is in the best interest of the 504 Loan Program 13 CFR § 120.820(e).</p>	<p>6. §120.823(c)(5) should be read together with 120.820 of 13 CFR which lists the entities with which a CDC may be affiliated. There was no change on the types of entities a CDC may be affiliated with.</p> <p>For entities other than approved affiliations under 120.820, a CDC may not permit more than one of its Directors to be employed by or serve on the Board of Directors of any single entity (including the entity’s affiliates), unless that entity is a civic, charitable, or comparable organization that is not involved in financial services or economic development activities.</p>
<p>7. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions.</p>	<p>7. No change.</p>
<p>8. Vacancies must be filled from the Membership by the members.</p>	<p>8. CDC Boards are self-perpetuating. The CDC Board elects new Board members. CDCs are no longer required to elect Board Members from their Membership, as Membership is optional.</p>
<p>9. A quorum shall require at least 5 Directors authorized to vote.</p>	<p>9. A quorum must be present for the duration of the meeting to transact business.</p> <p>The quorum shall be set by the CDC but shall be no less than 50% of the voting members of the CDC Board.</p> <p>Attendance may be through any format permitted by state law.</p>
<p>10. When the Board votes on SBA loan approval or servicing actions, at least one Board Member with commercial loan experience acceptable to SBA, other than the CDC manager, must be present and vote.</p>	<p>10. When the Board votes on SBA loan approval or servicing actions, at least two Board Members with commercial loan experience acceptable to SBA, other than the CDC manager, must be present and vote.</p>

Before Final Rule (effective until 4/21/14)	Final Rule Corporate Governance Rules Effective Date (After 4/21/15)
11. There must be no actual or apparent conflict of interest with respect to any actions of the Board.	11. No change.
12. The Board shall have and exercise all corporate powers and be responsible for all corporate actions and business. The Board is for ensuring that the structure and operation of the CDC, as set forth in the Bylaws, comply with SBA’s Loan Program Requirements.	12. No change.
13. 13 CFR 120.825 states “Any funds generated from 503 and 504 loan activity by CDC remaining after payment of staff and overhead expenses must be retained by the CDC as a reserve for future operations or for investment in other local economic development activity in its Area of Operations. If a CDC is operating as a Multi-State CDC, it must maintain a separate accounting for each State of all 504 fee income and expenses and provide, upon SBA’s request, evidence that the funds resulting from its Multi-State CDC operations are being invested in economic development activity in each State in which they were generated.”	13. CDC are required to invest in economic development in each of the states in its Area of Operations in which it has a portfolio, with the Board of Directors approving investments through the CDC’s budget review. §120.830 (a)(4) Report on investment in economic development. Written report on investments in economic development in each State in which the CDC has an outstanding 504 loan.
14. 13 CFR 120.840 (d)(4) Only CDCs with ALP authority were required to maintain Director’s and Officer’s insurance. Previously, Directors and Officer’s Insurance was not required for all CDCs. Errors and Omissions insurance was not required for any CDCs. Many CDCs opted to obtain insurance beyond the required level or regardless of their ALP status. However, as the insurance requirement was not required for all CDCs, it was not included in the Bylaws in most instances.	14. The Board of Directors shall maintain Directors’ and Officers’ Liability and Errors and Omissions insurance in amounts established by SBA that are based on the size of the CDC’s portfolio and other relevant factors. The sliding scale for D & O and E & O insurance will be published by Notice and cross-referenced in the next future SOP updates.
15. CDC Bylaws would most probably not have included a provision for certification in writing prior to March 21, 2014, that the CDC Board members read and understood SBA requirements, as this is a new requirement, effective April 21, 2014.	15. All CDC Directors must annually certify in writing that they have read and understand §120.823, and copies of the certification must be included in the Annual Report to SBA. §120.830 (a)(3) requires “Certification of members of the Board of Directors. Written annual certification by each Board member that he or she has read and understands the requirements set forth in §120.823.
16. Written internal control policies for CDCs are required by §120.826.	16. Final rule restates the requirement of §120.826 (since 2008) and also includes this in Board oversight responsibilities under revised §120.823.

Before Final Rule (effective until 4/21/14)	Final Rule Corporate Governance Rules Effective Date (After 4/21/15)
17. CDCs should reference compliance with federal and state requirements and may include references to other committees and their roles in the CDC Bylaws at its discretion. SBA does not require references to committees other than Executive Committees and Loan Committees.	17. No change.
EXECUTIVE COMMITTEE – 120.823(a) and (b)	EXECUTIVE COMMITTEE– 120.823 (d)(4)(i)
1. SOP 50 10 5 (F) Subpart A required that if a CDC had an Executive Committee, it must meet the same requirements as the CDC Board.	1. CDC Bylaws must authorize an executive committee in its Bylaws if a CDC selects the option of an executive committee.
2. Delegation of authority to an Executive Committee does not relieve a Board of its responsibilities.	2. Delegation of authority to an Executive Committee does not relieve a Board of its responsibilities.
3. Executive Committee delegations were included in the CDC’s bylaws as permitted by State laws.	3. No further delegation or redelegation of a Board’s authority is permitted.
4. Executive Committee must: (a) Be chosen by and from the Board of Directors from the Board; and (b) Meet the same organization and representational requirements as the Board of Directors	4. Executive Committee must: (a) Be chosen by and from the Board of Directors from the Board; and (b) Meet the same organization and representational requirements as the Board of Directors, except the Executive Committee must have a minimum of five voting members who are present to conduct business.
5. The CDC Board not the Executive Committee must ratify all Loan Committee decisions.	5. Only the Board or Executive Committee, if authorized by the Board, may provide credit approval for loans greater than \$2,000,000.
LOAN COMMITTEE- SOP 50 10 5 (F) and 120.823	LOAN COMMITTEE - 120.823 (d)(4)(ii)
1.The Board may establish a Loan Committee of non-Board Members that reports to the Board.	1. The Board of Directors may establish a Loan Committee. The Bylaws must include any delegations of authority to the Loan Committee. The Loan Committee may exercise the authority of the Board only as set forth in §120.823 (d) (4)(ii); however, the delegation of its authority does not relieve the Board of its responsibility imposed by law or Loan Program Requirements.

Before Final Rule (effective until 4/21/14)	Final Rule Corporate Governance Rules Effective Date (After 4/21/15)
2. Loan Committee members must include at least one member with commercial lending experience acceptable to SBA.	2. The Loan Committee must: (a) Be chosen by the Board of Directors. If there is a Membership (or shareholders), the loan committee must be chosen from the Membership or the Board. If there is no Membership, this is not a restriction. If the loan committee has no representatives from the Board of Directors, then all loan committee actions must be approved by the Board. (b) Have at least two members with commercial lending experience satisfactory to SBA, neither of which is the CDC manager.
3. All members of the Loan Committee must live or work in the Area of Operations of the State where the 504 project they are voting on is located unless the project falls under one of the exceptions listed in §120.839, Case-by-case extensions.	3. The members of the Loan Committee must live or work in the CDC's Area of Operation of the State where the 504 project they are voting on is located unless the project falls under one of the exceptions listed in §120.839.
4. No CDC staff may serve on a Loan Committee	4. If the Board of Directors chooses to establish a Loan Committee, no CDC staff or manager may serve on the Loan Committee
5. The CDC's Board must ratify the actions of any Loan Committee.	5. The Loan Committee, if established, may be delegated the authority to provide credit approval for loans up to \$2,000,000.
6. The CDC's Board must ratify the actions of any Loan Committee.	6. For loans of \$1,000,000 to \$2,000,000, the Loan Committee's action must be ratified by the Board or Executive Committee prior to Debenture closing.
7. Loan Committee quorum requirement were included in CDC Bylaws. Attendance in person was required.	7. The Loan Committee must have a quorum of at least five (5) committee members authorized to vote, with attendance allowed in any method allowed by state law.
8. If a CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must have a Loan Committee and Membership for each state.	8. If a CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must have a Loan Committee for each state.
9. There must be no actual or apparent conflict of interest with respect to any actions of the Loan Committee.	9. The CDC must have no actual or appearance of a conflict of interest (including, for example, a Loan Committee members participating in deliberations on a loan for which the Third Party Lender is the member's

Before Final Rule (effective until 4/21/14)	Final Rule Corporate Governance Rules Effective Date (After 4/21/15)
	employer or the member is otherwise associated with the Third Party Lender)
10. Prior to Final Rule, CDC loan policy manuals were not required to be referenced in the CDC's bylaws.	10. The CDC must establish and set forth in detail in a policy manual its credit approval Process and this should be reflected in the CDC bylaws.
11. Previously CDC loan credit approval process was not required to be referenced in the CDC's bylaws.	11. All 504 loan applications must have credit approval prior to submission to the Agency. This requirement should be reflected in the CDC bylaws.

FAQs on Eliminating the CDC Membership Requirement

1. If a CDC retains its Membership, should this be included in the CDC's Bylaws?

Yes.

2. If a CDC retains its Membership, what are the Membership composition requirements.

SBA will no longer monitor a CDC's Membership composition. However, it may be advantageous to the CDC if their Membership composition includes representations from the same groups as needed to meet SBA's CDC Board requirement composition.

3. If a CDC chooses to have a Membership, are they required to include their Membership in the CDC's annual meeting?

No. Meetings of the Board are required. If the CDC chooses to retain a Membership, the CDC should follow their State laws and Bylaws on meetings of their CDC Membership.

3. Now that the Membership requirement is eliminated, if the CDC selects the option of a Membership, can an employee qualify as a member.

SBA will no longer monitor CDC Membership.

4. How does a CDC fill Membership vacancies?

SBA no longer has requirements on how a CDC fills its Membership vacancies. The CDC should follow its State laws and comply with its Bylaws for filling Membership vacancies.

5. If multi-state CDCs no longer have a have a Membership in each state into which they are expanding, are they still required to have a Loan Committee for each state?

Yes.