

CDC Bylaw Summary Guide Overview

On March 21, 2014 2014 SBA published significant changes in the regulations governing the 504 and 7a loan programs. One area significantly affected is the governance structure and requirements for CDCs.

The required changes will impact CDC bylaws requirements. CDCs must comply with the requirements within one-year from the effective date following publication in the Federal Register. Therefore CDC bylaws changes must be made prior to April 21, 2015 in order for a CDC to be in compliance with the regulations as revised.

All CDCs are to review, in detail, all of the revised regulations as it is the CDC's responsibility to comply with all program requirements to ensure continued program participation.

This Bylaws Review summary guide is designed to assist in understanding key requirements and changes in the new regulations as CDCs move forward in amending Bylaws and restructuring the CDC. It is not a substitute for specific 504 program regulations.

Active CDCs are required to comply with Bylaws changes in the Final Rule prior to one year from the effective date of April 21, 2014. New CDC applicants must comply with the new requirements in their application.

A summary of the major bylaws changes as a result of the Final Rule are:

- Removed §120.822. CDC Membership is no longer mandatory. It is now optional.
- Revised §120.823, CDC Board of Directors requirements by number and composition and require two commercial lenders other than the CDC manager.
- Board responsibilities updated and oversight responsibilities for CDC operations and finances were enhanced in §120.823 and §120.830.
- Updated §120.823 requirements for Executive Committee. While Executive Committees are optional, if a CDC has an Executive Committee it must be reflected in the Bylaws in accordance and comply with the updated §120.823.
- Updated requirements for Loan Committee. While Loan Committees are optional unless a CDC has multi-state status, if a CDC has an Loan Committee, it must be reflected in the bylaws in accordance and comply with the updated §120.823. All multi-state CDCs must have a loan committee in each state of operation as required in the revised §120.835.

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Must be included in CDC Bylaws:

REGULATION CITATION	REQUIRMENT EFFECTIVE 4/21/15
120.822 - Membership	CDC Membership is no longer required. A CDC may at its option choose to have a membership. SBA will no longer monitor CDC membership; however if a CDC does have membership, it should be included in the CDC's Bylaws.
120.823 – Board of Directors	REQUIRMENTS EFFECTIVE 4/21/15
120.823 (a)	Formation- Board formed in any manner permitted by state law. Board size- SBA requires 9 and recommends no more than 25
120.823 (c)	Frequency of Meetings-at least quarterly Format- any permitted by state law Quorum-no less than 50% of the Board
120.823 (d)	<p><u>Committees</u>-optional but if any, must be authorized by the Bylaws. Delegation to committee(s) does not relieve Board of responsibility imposed by law or 504 Loan Program Requirements.</p> <p><u>Executive Committee</u> -Chosen by Board of Directors -Executive Committee must meet the same organizational and representational requirements as Board of Directors except have a minimum of 5 voting members present to transact business. At a minimum, the Board must have directors with background and expertise in internal controls, financial risk management, commercial lending, legal issues related to commercial lending and corporate governance.</p> <p><u>Loan Committee</u> - Chosen by Board of Directors or from membership or shareholders, if applicable. - No staff or CDC Manager may serve on Loan Committee. - Have quorum of at least 5 voting members Have at least 2 members with commercial lending experience - No direct or actual conflict of interest (ex. Member cannot participate in deliberations on loan for which member is employed by or otherwise associated with the Third Party Lender.)</p> <p><u>Financial</u>- monitor portfolio, review semiannual report on portfolio performance and ensuring adequate reserves are maintained and economic development investments are made.</p> <p>Establish Conflict of interest policy.</p> <p>Delegations of Authority to Loan Committee or Executive Committee, if any (Loan Policy Manual detailing credit approval policy may be a separate document)</p>

Other requirements of the Board that may be included in the Bylaws or otherwise demonstrated:

REGULATION CITATION	REQUIRMENT EFFECTIVE 4/21/15
120.823	
120.823 (a)	<p>Qualifications - The Board must be representative of the following groups: internal controls, financial risk management, commercial lending, legal issues relating to commercial lending, and corporate governance.</p> <p>At least one director representing economic community or workforce development fields</p> <p>At least two directors representing the commercial lending field</p>
120.823 (b)	Two voting members, other than CDC director, with commercial lending experience must be present and vote
120.823 (c)	<p>No member of CDC staff may be a voting member of the Board of Directors. The CDC manager may be a voting member of the Board of Directors.</p> <p>Commercial lenders must represent less than 50% of the Board</p> <p>No Board member may serve on the Board of another CDC, and no more than one may serve on the Board or another single entity (See 120.823(c)(5) and 120.820)</p>
120.823 (d)	<p>Responsibilities of the Board – CDC are advised to review 120.823 (d) carefully for enhance CDC Board oversight for CDC operations, financial oversight, annual reports and certifications.</p> <p>Internal Control Policies – restates the requirement for written internal control policies in §120.826 (since 2008) and also includes this in Board oversight responsibilities under revised §120.823.</p> <p>Loan Approval Policies - 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. SBA does not require an Executive Committee or Loan Committee. However, if the CDC has these committees, they should comply with 120.823 (d)(4)(i) and 120.823(d)(4)(ii).</p>
120.823 (e)	<p>Annual certification by CDC Board of Directors- 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.</p> <p>Insurance Requirement – The Board of Directors shall maintain Directors’ and Officers’ Liability and Error 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 future SOPs.</p>