

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.

§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.